CALIFORNIA

# The Law of Real Estate

TITLE AND CONTROL OF REAL PROPERTY

CONTRACTS OF SALE OF REAL PROPERTY

TRANSFER OF REAL PROPERTY

LANDLORD AND TENANT

REAL ESTATE AGENTS

ALL FORMS FOR EVERY PURPOSE

ONE DOLLAR NET

462

AS THE MANY MINOR POINTS WHICH WILL ARISE UNDER THE LAW OF REAL PROPERTY CANNOT BE FULLY EXPLAINED IN A BOOK OF THIS SIZE, AND AS THE PUBLISHERS DESIRE THAT THE PURCHASER SHOULD HAVE THE BEST ASSISTANCE POSSIBLE IN EXPLAINING DOUBTFUL POINTS:

THIS IS TO CERTIFY THAT T. R Crosswell

404 Grant Bldg.

HAS PURCHASED A COPY OF THE LAWS OF REAL ESTATE AND IS THEREBY ENTITLED TO A FREE CONSULTATION WITH THE COMPILOR OF THIS BOOK, WALTER GOULD LINCOLN, UPON PERSONAL PRESENTATION OF THIS CERTIFICATE TO HIM AT HIS OFFICE, 617 AMERICAN BANK BUILDING, LOS ANGELES, CALIFORNIA.

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WHAT IS REAL PROPERTY.

OWNERSHIP AND CONTROL OF REAL PROPERTY.

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REAL ESTATE AGENTS.

Compiled for the Publishers from the codes and decisions of the Courts by

WALTER GOULD LINCOLN

of the California Bar

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# NOTE

The statements of law and the forms as set forth herein are intended for the state of California only, and do not pretend to conform to the law of any other state. It is hoped the book will be found of much practical value, and that it will meet the popular demand for a work of this character.

THE PUBLISHERS.

CHAPTER I.

# WHAT IS REAL PROPERTY.

All property is divided into two classes:

1. Real.
2. Personal.

Just when property is to be classed as real, and when as personal, is often a very vexatious question. If it always maintained exactly the same form and characteristics there would not be much difficulty; but unfortunately it doesn't.

Personal property may undergo a sudden transformation into real property as the result of the mode of affixing it to land, while in other cases it may still retain its character as personal property.

Likewise real property is readily converted into personal property because of some change in form by the operation of nature, the act of God, or the desire and contrivance of man.

This may be illustrated with the case of a house, barn, or shed. When affixed to the land of the owner it is in the eyes of the law just as much a portion of the land as the soil itself, and passes with

the land as a matter of course, even if not in any way mentioned in the deed or contract of sale; but sever the house, or barn, or shed from the land, or tear it down and pile it up on the land, and it immediately becomes personal property. In the one case it is governed by one set of laws, and in the other by an entirely different set. In the former, as real property, every contract affecting it, except a lease for one year or less, must be in writing in order to have any standing in court as a legal transaction; in the latter, as personal property, such contracts need not necessarily be in writing, but are governed by the laws affecting personal property.

The troublesome law of fixtures and improvements, their ownership and the right to remove them, the matter of crops, and growing things, and the right to harvest them, as between vendor and vendee, and again as between landlord and tenant is involved in this vexatious question as to when property is real and when personal.

That it is a vexatious question and not a simple one is shown by the vast amount of litigation over it, as evidenced by the court records, the many contra-

dictory decisions in the different states, and the great amount of studious thought and labor which has been expended in the judicial adjustment of this subject by the most learned jurists and brightest intellects of the world.

In this article an endeavor will be made to show as plainly, and with as much certainty as possible, the established practice in this state for distinguishing between property which is real and that which is personal.

## DEFINITION OF REAL PROPERTY

**By the Civil Code of California.**—Many definitions of real property may be found in the law dictionaries, but the civil code of this state furnishes its own interpretation of the term. It declares that real property consists of:

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

## WHAT IS LAND

**Civil Code Definition.**—Land is the solid material of the earth, whatever may be the ingredients of which it may be

composed, whether soil, rock, or other substance.

**To What Ownership of Land Extends.**—The owner of land has the right to the surface and to everything permanently situated above or beneath it.

This right is supposed to extend downward to the center of the earth, and an indefinite distance upward toward heaven.

It is likewise a doctrine of law that the owner of land owns also the air over it, and he is protected from all encroachments on his property, even to the extent that no one may construct anything in any way overhanging the land of another; not so much as an eavespipe, cornice, or gutter.

On this theory all the atmosphere over the land area of the earth is held in public and private ownership. Therefore an aviator passing through it in his airship without permission is a trespasser, and does so by sufferance of the owner of the underlying realty.

But as there is in reality no such thing as absolute ownership in land, the degree or tenure of ownership being entirely a matter of legislative will and enactment, and as the law prescribes the

conditions of man's entrance upon the earth, rules for his actions while passing through life, and administers his estate when he has passed on, it will of necessity modify its rules, as it has done many times before, to suit changed conditions as they occur.

Therefore it seems reasonable to infer, that as man has heretofore given up many of his supposed exclusively personal rights for the good of society in general, that he will be called upon to grant free passage or right of way over his real property to the airships of the world, subject to proper restrictions, without compensation therefor.

Wireless telegraphy and telephony form another instance which will necessitate legislative modification of the accepted theory of proprietorship of everything above and below the surface by the owner of the land.

Already the shadows of this coming event are beginning to assume international proportions; it is a serious matter which must some day enlist the wisdom and diplomacy of the world in its solving.

In all sales and conveyances of surface land areas, all coal, metals and min-

erals of every description below the surface, while in place, are regarded as land, and constitute part of the estate which passes by the conveyance without special mention thereof. But under the system practiced in the United States, and in this state, mineral deposits may be sold or conveyed by deed entirely separate from the surface rights, or may be reserved to the seller when he parts with the surface.

When the surface owner conveys the coal or other minerals under the land, the grantee takes the minerals, but nothing else, save the right of access to the property for the purpose of mining and removing them. When the minerals are all removed the grantee's interest ceases, and the space the minerals occupied reverts back to the grantor.

Oils and gases occupy much the same position as water. They are real property only while in actual occupancy of the owner of the surface. They are usually classed as minerals, and, so long as they remain in place, are included in the term land. But they may escape, and therefore a grant of oils and gases amounts practically to only a license to sink wells or shafts and extract what-

ever quantities of either may be found.

Commonly, also, within the term land are included all houses and buildings standing thereon, as well as all natural produce of the soil. Our code, however, does not include them within its definition of land, but instead treats of them as things affixed to land, under which heading they are defined.

**Alluvion.**—Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, it is termed alluvion, and such land belongs to the owner of the bank, subject to any existing right of way over the bank.

**Avulsion.**—If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, it is termed avulsion, and the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof. But an acquiescence on his part will in time entitle the owner of the land to

which it is attached to claim it as his own.

**Islands.**—Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

**Ownership of Overhanging and Line Trees.**—Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

If it be a fruit tree, the fruit belongs to the owner of the trunk. If his arms be long enough he can reach over his

neighbor's land and pluck the fruit, or he can stand on the fence and do so. But he cannot go upon the land of his neighbor for this purpose without his permission. If he did so he would be a trespasser.

On the other hand, the adjacent owner has the right to lop off the roots and branches of a tree which grow into or overhang his land to the dividing line, or to pick up the fruit which falls upon his ground.

A tree whose trunk happens to stand on the dividing line of two or more owners belongs to them in common. Neither can cut it down without the other's consent, nor in any wise mutilate even the portion on his own ground if the tree is injured thereby.

**The Right of Eminent Domain.**—The right to control the surface of his land, as well as everything permanently situated above or below it, while inviolable as between the owner and his fellow man, is qualified by the superior right of the state to re-assert, either temporarily or permanently, its dominion over any portion of the soil of the state, by reason of public necessity, or for the public good.

Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace, appropriation of the same may be made for public purposes, such as the opening of roads, for railroads, or other channels of trade or travel, parks and public improvements.

It is the right which government retains over the estates of individuals to appropriate or resume them for public use whenever the public interest requires it; for which, of course, adequate compensation or payment must be made.

## THINGS AFFIXED TO LAND

**Civil Code Definition.**—A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs.

Or embedded in it, as in the case of walls;

Or permanently resting upon it, as in the case of buildings;

Or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

**Growing Trees, Vines, and Shrubs.**—Under the above definition there can be

no doubt that trees, both native to the soil or planted, vines (including alfalfa roots), shrubs, and all natural products growing upon or out of the soil, are, while in place, part of the real property. Instantly they are severed from the land, however, their character is changed from real to personal, and must be treated as such.

Likewise, when, upon sale of the land, certain growing trees, vines or shrubs are reserved to the seller in the conveyance the things thus reserved are thereby converted into personal property, and are no longer part of the real estate, although still affixed or attached to the land. They belong to the seller of the land, who may enter for the purpose of caring for or removing them, according to the terms of his contract.

Trees and shrubbery grown upon premises leased for nursery purposes are generally held to be the personal property of the lessee, subject to his removal according to the terms of his lease.

**Growing Crops.**—In the law dictionaries "growing crops" are defined to be those annual products of the earth which owe their existence to the industry of man by cultivation of the soil, including

all forms of grain, roots, tubers, etc. In this definition all fruits, berries, nuts, etc., are excluded, they being classed as natural products of the earth. To maintain such a distinction could but lead to endless difficulties, so the legislature of California declared that the term growing crops should include not only those things which are the products of annual plantings, but also those things which are the subjects of annual harvesting; and our courts, after much dalliance and vacillation, have estabished as the settled policy of this state that the term embraces in its scope also the products of our fruit and nut trees, vines, shrubs, roots (such as alfalfa), etc., which are customarily harvested and sold as annual crops.

The present day practice is to treat all growing crops as personal property or chattels, even while still annexed to the soil; that is, they may be bought and sold, mortgaged, or attached for debt, the same as chattels, at all times subject to the rules which govern personal property, and not those which govern real property.

But, again, although crops while attached to land are usually regarded as

personal property, yet under some circumstances they are held to be realty, and undoubtedly justly so. A distinction is made between GROWING crops and RIPENED crops.

Where the crop is still green and immature, unless reserved, it will pass under a grant to the purchaser of the land, since, being unfitted at this stage of its growth for severance from the soil from which it derives its sustenance it must be regarded as inseparably affixed to it, thus losing its character as personal property or chattels.

But in the case of ripened crops it is different. It is held that when the crop has ceased to draw nutriment from the soil, and is ready for the harvester, it can no longer be classed as realty so as to pass with the land, but it assumes the character of personalty, the fact that it rests upon the land or upon the trees unsevered being of no consequence.

Therefore, it may be said that crops may be sold, mortgaged, attached for debt, or otherwise regarded for all purposes as personal property, with the exception that when immature they will pass with a sale of the land as part of the land, unless reserved in the convey-

ance; but that when mature they are to be regarded strictly as personal property which does not pass with the grant, unless so intended, but on the contrary may be garnered by the seller; for which purpose he has the implied right to enter upon the premises, even though they have passed from his possession and control.

This question as to whether crops are real or personal property has given and continues to give much trouble; there is one safe way to avoid all argument and dissension, and only one; and that is, to distinctly set forth in the contract of sale or instrument of conveyance the real intentions of the parties.

**Houses, Barns, Sheds, and Other Structures.**—It is an inviolable rule of law that everything which is essential and necessary to the BENEFICIAL USE AND ENJOYMENT of land is to be regarded as part of it, and passes with the conveyance, in the absence of any contrary reservation by the grantor, even though the thing may be by its own nature removable.

As between vendor and vendee this rule is strictly enforced, and where the matter is not otherwise affected by the

terms of the contract of sale, a grant of land, without any qualifications, conveys not only the soil, but everything attached to it (except, possibly, the ripened crops), including all the buildings, mines, trees, growing crops, utensils and machinery appertaining to a building for manufacturing purposes, gas pipes, fittings, water pipes, ranges and boilers, tanks, furnaces, heaters and ovens when permanently attached, window and door screens, storm doors, keys, hop and bean poles, bee hives, fruit trays, dryers, etc.; in general, as before stated, whatever the vendor has annexed to a building or placed upon the land for the more convenient use thereof and improvement of the premises.

It may therefore be said that the general rule would seem to be, that where the annexation of personal property to realty is permanent in its character, and essential to the purpose for which the property is used or occupied, it should be regarded as realty, and passes with a grant of the freehold, notwithstanding the annexation may be such that the chattels might be severed from the realty without injury to either.

Grants are sometimes made conveying

a certain building, or a house, without mentioning the land. This may be condemned as bad practice; for while it is true that the courts have several times decided that the land upon which the building stood, including as much more as was necessary for its beneficial enjoyment, also passed by the conveyance of the building, still it leaves opportunity for controversy. The better practice is always to convey the land, and then there can be no question about the buildings or improvements; they will pass with the title as a matter of right, if there is nothing in the contract to the contrary.

**Entirely Different Rule Applies Between Landlord and Tenant.**—For a long time it was very generally held that whatever was once affixed to realty became a part thereof, and could not be removed, no matter by whom placed there. As seen above, this is still strictly true as BETWEEN VENDOR AND VENDEE, upon sale of the land, but the rule has been greatly modified as between LANDLORD AND TENANT, the statutes now providing for the removal by the tenant of such things as he has brought upon the land for the pur-

pose of trade, manufacture, or domestic use.

Thus the law has come to recognize a species of property which is said to constitute the borderland between realty and personalty, partaking sometimes so much of the characteristics of both as to make the line between them hardly distinguishable. To this species of property has been given the name "Fixtures," under which heading it is considered, immediately following.

## FIXTURES

**Provisions of the Code.**—The Civil Code says:

"When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it."

But the exigencies of modern business have forced the relaxation of this rule to a marked extent; so much so that a subsequently added section of the Code declares:

"A tenant may remove from the leased premises, at any time DURING THE CONTINUANCE OF HIS TERM, any-

thing affixed thereto for purposes of trade, manufacture, ornament, or domestic use, unless the thing has, by the manner in which it is affixed, become an integral part of the premises."

Just what shall be regarded as a fixture, so as to bring it within the rule permitting its removal, is not always an easy matter to determine, but as a general rule it may be stated that most of the things which would pass with a deed of the land, if placed on the land by the vendor, may be removed by the tenant as his personal property when placed on, or attached to, the realty by him; the principal exception being in cases where they have been so attached to the property as to have become practically a part of it.

The language of the statute does not include agricultural fixtures, but the rule of the American courts is to include them also in the classification of trade fixtures; thus widening the list to include pretty nearly everything in the way of buildings or structures, machinery, tools and utensils, store fixtures, etc., which the tenant may remove when lawfully entitled to.

**Intention of the Parties Principal**

**Thing in Deciding Whether Fixtures Are Removable or Not.**—The intention of the parties in affixing things to land or buildings is the chief element to be considered in determining their character; the intention being inferred from the nature of the article affixed, the relation and interest of the party making the annexation, the structure and mode of annexation, and the purpose and use for which it has been made.

If the intention is that the chattels shall not, by annexation, become a part of the realty, as a general rule they will not. The exception is where the thing annexed, or the mode of annexation, is such that it could not be removed without practically destroying it, or where it, or part of it, is essential to the support of that to which it is attached.

It a tenant build an addition to the house of his landlord, he probably could not remove it; but if the addition be a complete structure in itself, simply set up close to the house, without being imbedded in the ground, or otherwise permanently attached, he would have the right to remove it.

**Mode and Degree of Attachment.**—The manner in which a thing is affixed

to land is also an important factor in determining whether it is real or personal property. If so attached that it becomes a permanent and integral part of the realty by being imbedded in it, or fastened to it so that it cannot be removed without MATERIAL INJURY to the realty, it is then usually to be deemed part of the realty.

The mode of attachment is of particular moment in controversies between landlord and tenant, but of much less importance as between vendor and vendee; for at best the only real value to be attached to the manner of physical attachment is in determining the purpose for which the attachment was made, and the interest of the party in making it.

As before stated, the rule for determining what is a fixture is construed strongly AGAINST THE SELLER and IN FAVOR OF THE BUYER. When an owner puts improvements on his land it is presumed he intends them to be permanent, for the benefit of the land; and unless he mentions specifically in the contract of sale, or in the instrument of conveyance, his intention to reserve any or all of such improvements, as a general thing they will pass with the land, and

he is likely to have a very considerable trouble in proving otherwise.

But as between landlord and tenant an entirely different rule prevails. Here the benefit of the doubt is all IN FAVOR OF THE TENANT as AGAINST THE LANDLORD. It is not to be presumed that the tenant intends the improvements which he makes to be for the benefit of his landlord; on the contrary, it is to be presumed he makes them strictly for his own benefit.

Still, there is no unvarying test; and neither the mode of annexation, nor the purpose of the improvements, can ever be said to be entirely conclusive, the express or implied understanding of the parties being more usually the pivot on which the decision hinges. But as a general principle, in the absence of any contract or agreement to the contrary, it may be said that what a tenant affixes to leased premises may be removed by him at any time DURING HIS TERM, if he can do so without material injury to the realty.

**Only One Safe Way to Be Sure.**— Where there is such an open field for controversy as there is on this subject of what constitutes fixtures, or things af-

fixed to land; when they are to be classed as real and when as personal property; when they are removable and when irremovable; and where there might be much difficulty in proving the real intentions of the parties, the only sane thing to do is to have a thorough understanding beforehand.

In case of a sale of the land, enumerate everything which goes with it, and likewise everything which is to be reserved.

In case of a lease, put in the instrument how all fixtures and improvements belonging to or erected by the tenant are to be attached to the land, and when and how removed.

Always remembering that parties to an agreement may fix upon chattels attached to realty whatever character may be agreed upon, either real or personal, and whatever may be their agreement the courts will enforce, it having been decided many times that fixtures or structures of any sort when placed on leased premises, under an agreement for removal, in such manner as not to become permanently attached thereto, do not pass to a subsequent purchaser of the land.

## THINGS APPURTENANT TO LAND

**Civil Code Definition.**—A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

Other examples of appurtenances are building restrictions, to build or not to build fences, to set buildings back certain distance from front line, restricting use of premises, water rights, rights of way, franchises, right to cut timber, to fish or hunt, etc.

Such incidentals may be either temporary or permanent in their nature. When permanently attached to land, as by right, they are called easements, or covenants which run with the land. Thus they become burdens affecting lands, by which the proprietor is restrained from the full use of his property, or is obliged to suffer others to do acts upon it.

**How Easements Are Acquired.**—An easement, when created by a writing, can be acquired only by means of a formal deed or grant. There must be express words creating and establishing

the right sought to be conveyed. Attempts are sometimes made to create an easement by means of a consent in writing, other than a formal conveyance, but such an instrument is of no more avail than a verbal agreement would be.

Easements are also sometimes acquired by custom. Thus, the inhabitants of a certain locality may acquire a right of way over a parcel of land by custom, and when such right is undisputed for a sufficient length of time it becomes a prescriptive right, similar to the right popularly known as "squatter sovereignty," which the proprietor of the land would probably find considerable trouble in annulling, if he so desired, if, indeed, he could succeed in doing so at all.

Easements, therefore, being an interest in land, come within the code definition of what constitutes real property, and when the title is transferred pass with it without special mention.

CHAPTER II.

# OWNERSHIP AND CONTROL OF REAL PROPERTY

The laws governing the ownership and control of property in California are not generally well understood. There are probably two main reasons why this is so. The first is, that there are so many newcomers to the state; the second is, that it is the custom to join both husband and wife in real estate transfers, whether so required by law or not. This leads the public to the conclusion that each has some lawful interest in the property of the other. Such, however, is not the case, which this article will attempt to make clear, and show as well their true relationship in this respect.

## PROPERTY RIGHTS OF HUSBAND AND WIFE

**Language of the Law.**—The five sections which immediately follow are in the exact language of the civil code:

**What is Separate Property of the Husband.**—All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise or descent, with the rents, issues, and profits thereof, IS HIS SEPARATE PROPERTY.

**What is Separate Property of the Wife.**—All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, IS HER SEPARATE PROPERTY.

The wife may, WITHOUT THE CONSENT OF HER HUSBAND, convey her separate property.

**Neither Has Interest in Property of Other.**—Neither husband nor wife has ANY INTEREST in the property of the other.

**Husband and Wife May Contract with Each Other, or with Others, Same as if Unmarried.**—Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried.

**No Courtesy or Dower.**—No estate is allowed the husband as tenant by cour-

tesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

**Tells the Whole Story.**—The five sections of the code quoted above tell practically the whole story of property rights as between husband and wife, with the exception of community rights, which are shown under the next heading below.

Further interpreted, they mean that all the property possessed by either husband or wife before marriage, and all that acquired afterwards by either as the profits thereof, or with their separate funds, or by gift or inheritance, remains and continues to be his or her sole possession, the same as if they were unmarried. And neither while living, nor after death, has either any claim, right, or legal interest whatsoever in what belongs to the other; with the single proviso that, after death, in the absence of a will otherwise disposing of it, either is entitled to a share in the property of the other by right of succession.

Likewise, the husband or wife has each ABSOLUTE CONTROL over his or her separate property. Either may, without the consent of the other, enter into

a contract of sale, rent, mortgage, or convey any or all of the same, or dispose of it by will or gift, with the like effect as if they were single persons.

They may buy from, or sell to, or convey by gift to, each other, the same as with other persons.

But neither can make any valid contract respecting the property of the other, or convey the same, without first being duly authorized so to do in writing, or by power of attorney.

## COMMUNITY PROPERTY

**Definition.**—Except the property described above as the separate property of husband or wife, all other property acquired after marriage by either husband or wife, or both, is community property.

**Management and Control of Community Property.**—The husband has the management and control of the community property, free from all restraint of the wife, or necessity of obtaining her consent to his acts. He is vested with discretionary power in all matters appertaining thereto, and can sell, convey, or encumber the same without the consent of the wife, regardless of her de-

sires, or of such interest as she may have.

But while the husband possesses the right of absolute freedom of control and alienation of the community property, he is not allowed to commit FRAUD on the wife, and all his acts must be in good faith, and not for the purpose of divesting or injuring her; therefore he cannot will away other than his interest, or make a gift of it, or convey it without a valuable consideration, while she is living, without her consent, in writing, first obtained.

The wife has no right whatsoever to sell, or to contract to sell, or otherwise dispose of any species of community property, and a purchaser from her takes no title as against the husband.

## CONVEYANCE OF SEPARATE AND COMMUNITY PROPERTY

**Why Purchasers Require Signatures of Both Husband and Wife.**—In view of the fact that the husband and wife each have absolute control over their separate property, with power to convey the same, and the husband has sole control over the community property, with like power to convey it, the question natur-

ally arises: Why is it necessary, then, to have the signatures of BOTH husband and wife to a grant or deed? The answer is: It is NOT necessary, in a legal sense. Each may sell, convey, lease, or encumber without the consent of the other, and the signature of the one in whose name the title stands is sufficient in law.

But, the reader replies, the purchaser always demands the signatures of both husband and wife to the instrument. That is practically true, and the reason is that it is a matter of prudence and not of law. The presumption is that property standing in the name of the wife is her separate property, but even this presumption may be attacked by creditors or others on the ground that the title was vested in her for fraudulent reasons; but where the title stands in the name of the husband it is not possible to tell from that mere fact just what his interest is, or whether his conveyance of it is in good faith.

Nobody cares to purchase trouble or possible law suits. Therefore, and for the reasons given, the prudent purchaser demands the signatures of both husband and wife to a conveyance by either of

them; for when both signatures are attached thereto there is no opportunity for dispute or controversy as to the ownership, and the right and justice and absence of fraud in the encumbrance or disposal, or the consent of both parties to the same.

If, however, the purchaser is satisfied that the property is the rightful possession of the person seeking to dispose of it, he is entirely justified in accepting the sole signature of such person to the conveyance. Then, if he chooses, he may bring an action in the courts to quiet his title, and, if judgment be rendered in his favor, his right of possession will be clear and complete.

## HOLDING PROPERTY AS JOINT TENANTS

**Permissible by Law, but Not so Commonly Employed.**—There is another method by which property may be held by husband and wife, or by two or more other parties. This is known as a joint tenancy, and the parties are known as joint tenants.

In a joint tenancy, the conveyance is made to and in the names of both the husband and wife, or of all the parties

who share therein, and each one holds an equal share. Each tenant can convey his interest separately, by his own signature, but the whole can be conveyed only with the consent and signatures of all the tenants. For form of deed, and further explanation of joint tenancies, the reader is referred to the subject of "Deeds."

**Power of Attorney by Married Woman.**—A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real property, with the same effect as if she were unmarried.

The husband may, by power of attorney, be constituted attorney in fact for the wife, to transact business for her and in her name.

CHAPTER III.

# CONTRACTS OF SALE OF REAL PROPERTY

Having shown in the two previous chapters what constitutes real property according to the laws of California, and also how it is owned and controlled, we will show in this article the legal formalities necessary to be observed in the making of valid contracts or agreements of sale, and in the succeeding article the manner and methods of alienation, or voluntary transfer from one person to another, for a consideration, in conformity with the laws of the state for that purpose provided.

## AGREEMENTS OF SALE AND PURCHASE

**Definitions.**—Where title to property is acquired by purchase the transaction is naturally the result of previous negotiation or agreement on the part of the purchaser to take the property upon the

agreed terms, and of the owner to sell and convey the same for the stated consideration.

The civil code defines a sale to be a contract by which, for a pecuniary consideration called a price, one transfers property, or an interest in property, to another.

An agreement to sell is a contract by which one engages, for a price, to transfer the title to property to another.

The distinction between a sale and an agreement for sale is this: In the former, the thing which is the subject of contract becomes the property of the buyer as soon as the contract is concluded; in the latter, it remains the property of the seller until the buyer has completed the terms of the contract. In the former case, one sells outright to another; in the latter, he only promises to sell when certain conditions are fulfilled.

An agreement to buy is a contract by which one engages to accept certain described property from another, and pay a price therefor.

An agreement to sell and buy is a contract by which one person engages to transfer the title to certain property to

another, who engages to accept the same and pay a price therefor.

**Every Contract for the Sale or Purchase of Land Must Be in Writing.**—Contracts for the purchase and sale of land are in their nature executory; that is, they do not vest any present title, or convey any interest in the land, but are simply agreements to convey at some future time, upon the fulfillment of the conditions contained in the contract.

Conveyance seldom immediately follows the making of the agreement. If it did, contracts of sale and purchase would seldom be necessary. But in the passing of title to real property much care is required to ascertain that the claim of ownership by the grantor, or seller, is clear; that is, that no others have any claim upon it. This makes it necessary to search the public records, which is a somewhat tedious process requiring considerable time. For this reason it is customary, when a purchaser has been found for a piece of property, for the seller and the buyer to sign an agreement, binding the one to convey, and the other to purchase, upon a satisfactory certificate of title being furnished. Such contract binds the parties firmly to the

agreement in the interval, while the search is being made, and also compels them to consummate the deal, if the examination proves the title to be as represented.

Such contracts are, of course, not compulsory or necessary, in a legal sense, to the transfer of property, if the parties are satisfied to rely on an oral agreement. But AN ORAL AGREEMENT CANNOT BE ENFORCED. There is a law of the state known as the "Statute of Frauds," which says that no agreement for the sale of real property, or of any interest therein (including the buildings, trees, timber, or any of the things coming under the definition of real property, as set forth in the first chapter of this book), shall be valid unless the same, or some note or memorandum thereof, IS IN WRITING, and subscribed by the party to be charged, or by his agent.

There is no evading or getting around this law. It is imperative. The agreement of sale or purchase must positively and unequivocally be in writing in order to have any standing in court. The great purpose of the statute of frauds is to afford protection against frauds and per-

juries, and this it effects by providing that mere oral proof of such contracts shall not be sufficient to establish them in a court of justice. An oral contract is all right so long as the parties carry out its terms, and no one suffers or is injured thereby; but if there were no written memorandum of the bargain, it would be possible for either party to decline to fulfill his part of the agreement, and the other party would be powerless to enforce it. It is for this reason that the law prescribes a weapon for the enforcement of legitimate contracts, as well as for the prevention of fraud, due to frailties of the memory from lapse of time, perjury, etc., by providing that no relief can be obtained in a court of justice, by an action at law, if the other party sets up the defense that the agreement upon which the action was brought was not in writing.

**Exception to Above.**—Notwithstanding the fact that the law requires all contracts for the sale of real property to be in writing, there are cases in which an oral bargain can be enforced. This might seem to be an evasion or overthrow of the statute itself; but in reality it is not; it being, rather, a further pre-

caution for the prevention of fraud.

It has long been the settled doctrine, and is now incorporated in the statute itself, that an oral contract for the conveyance of lands will be enforced by the courts in cases where the contract has been PARTLY PERFORMED, to such an extent that a refusal on the part of the seller to fully carry out its provisions would work a hardship or fraud upon the buyer. As for instance: Jones agrees verbally to sell his ranch to Brown, who, while waiting for the abstract, takes possession with Jones' permission, and proceeds to make improvements, or cultivate the soil. Before the deed is ready for delivery Jones gets a bigger offer for his land, which he would like to accept. But he would not be permitted to withdraw or cancel his agreement of sale to Brown, on the ground that the contract of sale was not in writing, for the reason that he has permitted Brown to proceed in good faith to occupy the premises in execution of the agreement; and the very fact that he transferred the possession to Brown would be considered such evidence of the agreement of purchase, and the intended transfer, that the courts would

recognize the transaction, and most probably compel its full performance. To do otherwise would be a manifest injustice and fraud upon the purchaser, which the statute is designed primarily to prevent, and would also put him in the anomalous position of a trespasser.

If, however, Brown took possession without Jones' consent, the case would be entirely different; he would have no rights under the oral agreement which the courts would be bound to enforce.

But part payment of the purchase money is not in itself regarded as sufficient evidence or reason for enforcing the performance of a verbal contract. Courts probably once did act on such evidence, and compel the seller to perform his agreement. Experience proved this to be a dangerous practice, however, and it has been abandoned. Now, in case of a hitch in the negotiations, where the contract is verbal, instead of compelling the seller to fulfill his contract by giving a deed, it is the custom to require him to refund the money given as part payment, or as a deposit.

Like most other difficulties arising from carelessness or negligence, troubles of this kind are easily avoided by com-

plying with the terms of the law: Put the contract, with all its details, in writing.

**Authority of Agent of Owner Must Also Be in Writing.**—Whenever the owner of real property delegates authority to an agent to make a contract for the sale of such property, THE AGENT'S AUTHORITY MUST ALSO BE IN WRITING, signed by the owner. This is likewise one of the most important provisions of the Statute of Frauds, and unless it be strictly observed, any contract made by the agent would have no binding effect upon either the owner or the purchaser. This feature of the law is a very important one, and its neglect is the cause of many wrangles and much litigation. It is further explained in detail in the chapter on "Real Estate Agents."

**Contract of Sale by Corporation.**—The powers of a corporation, and the control of its property, can be exercised only by its board of directors. Its officers, as such, have no power to dispose of its property, or of any interest therein. Therefore, every contract for the sale of real estate by a corporation must first be authorized by its board of direct-

ors, at a meeting thereof duly and legally convened. Some forms of such contracts state in the agreement of sale that it is made in pursuance of a resolution of the board of directors, duly held at such and such a date; and sometimes, also, the words of the resolution itself are inserted.

It is not necessary, however, that every individual contract by a corporation handling real estate shall be separately authorized by resolution. In such cases, it is customary for the board of directors to pass a blanket resolution, authorizing the president and secretary, or other officers, to make contracts of sale and conveyances, for and in the name of the corporation. This answers the same purpose, and contracts made in pursuance thereof have legal force and effect.

**Contract of Sale by Minor.**—A minor cannot, under the age of eighteen, make any valid contract relating to any interest in real property.

The contract of a minor over the age of eighteen is not void, but is voidable; that is, he may disaffirm or repudiate it at any time before majority, or within a reasonable time thereafter.

A minor cannot delegate authority to another person to do what he is himself forbidden to do.

**Contract of Sale of Wife's Property by Husband.**—The husband seems pretty often to take it for granted that he has the right to make a contract of sale of property which stands in his wife's name, without further authority. He has no such right, and if she refuses to carry out the contract trouble is almost sure to result over commissions, etc. A contract of sale should always be signed by the person in whose name the title stands, or by an authorized agent.

**Power of Attorney to Execute Contract of Sale Not Necessary.**—Authority to execute a contract of sale of real property may be delegated to an agent by any form of simple writing authorizing him to make such contract, and a power of attorney is not necessary for the purpose. But, as previously stated, such contract does not convey the property, or any interest therein, or authorize the agent to convey it. The actual transfer can be made only by a grant deed, and authority from the owner to another person to execute such deed in his behalf can be given only by means of a formal

power of attorney; for further details of which, and necessary forms, see chapter on "Transfer of Real Property."

**Construction of the Contract of Sale.**—The mere form or language of the contract of sale is immaterial. It may be in the shape of letters, or telegrams, or of a formally drawn instrument; or it may be in the shape of just simply notes or memorandum of the deal. What is very important, however, is that there must be a direct and positive offer to sell, and not a mere negotiation; also, that the terms of the bargain can be definitely ascertained from the writing, in whatever form it is, and that the property involved in the deal be described accurately enough to identify it without mistake. Above all, the one indispensable requisite is that the offer or agreement must be IN WRITING, and signed by the vendor, or by his authorized agent, whether it be drawn up with legal formality, or in the form of letters, or simply notes or memorandum of the transaction.

If the property is located in a city or town, it is a sufficient description of it to refer to the street and number, or to

the number of the lot and the name of the tract.

Country property may be referred to by its popular name, as the "Higgins ranch," or other appellation, if it has one, instead of giving the description by measurements.

**Use of the Forms.**—In making use of the forms which follow, care should be taken, where there is more than one owner, or the owner is of the female sex, or the contract is to be signed by both husband and wife, to change the nouns, pronouns, and verbs to correspond, where necessary. The parentheses () are used to indicate the portions of the forms which should be changed to meet the requirements of the transaction in hand, such as description of the property, terms of the sale, date lines, county and state, names of seller and buyer, etc. Otherwise the forms are in everywise complete, and meet all the requirements of the law.

**Form of Contract of Sale and Purchase.**—The most popular form of contract for the sale of real property now in use is in the shape of an agreement upon the part of the owner to sell, and of the prospective customer to buy, in-

corporated into one instrument, several very good examples of which are given below. If a separate offer to sell, or a separate offer to buy, is wanted, it is a simple matter to make it up by following the general language of the forms as given.

### AGREEMENT FOR THE SALE OF REAL ESTATE, FOR CASH

**THIS AGREEMENT, made this (first day of May, in the year nineteen hundred and fifty), between (Harold Howard, of the county of Orange, state of California), the party of the first part, and (Henry Howson, of the county of Riverside, state of California), the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained and made by and on the part of the party of the second part, agrees to sell and convey unto the said party of the second part, and the said party of the second part agrees to buy, all that certain lot, piece, or parcel of land, situate, lying and being in the county of (Orange, state of California), and bounded and particularly described as follows, to-wit:**

**(Here describe the property, same as in the deed), for the sum of (twenty thousand dollars) in gold coin of the United States; and the said party of the second part, in consideration of the premises, agrees to buy and to pay to the said party of the first part the said sum of (twenty thousand dollars), as follows, to-wit: (One thousand dollars cash), receipt of which is hereby acknowledged, and (nineteen thousand dollars, or so much cash and other property, as the case may be), on delivery by the party of the first part of a grant deed accompanied by an unlimited certificate of title showing title as hereinafter specified.**

**Within (twenty) days from date the party of the first part agrees to furnish an unlimited certificate of title issued by (name of title or abstract company), showing said premises to**

**be free and clear of all encumbrances, except (enumerate encumbrances, if any). If title is as specified above, the balance of the purchase price will be paid by the party of the second part as agreed. If the balance of the purchase price be not paid as agreed, the amount deposited and receipted for as above is to be relinquished and set over to the party of the first part as a consideration for this option. If title is not as specified above, said deposit is to be returned to the party of the second part.**

**(Or the last sentence in the clause above is sometimes made to read like this: ."If title is not perfect, as specified above, but can be made so, the party of the first part is to have (so many) days in which to perfect the same, which he hereby agrees to do; if title cannot be so perfected, said deposit is to be returned to the party of the second part").**

**All taxes and assessments now levied upon the said premises are to be paid by (as agreed).**
**Taxes and assessments.....**
**Insurance .....**
**Leases .....**
**Rents .....**

**The stipulations and agreements aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties hereto.**

**In witness whereof, the parties hereto have affixed their hands the day and year first above written.**

**(Signature of seller.....)**
**(Signature of buyer.....)**
**Signed and delivered in the presence of:**
**(Names of witnesses).**

In addition to the items contained in the above form, any other conditions may be added which the circumstances would seem to require. Although every prudent person would naturally inquire into all the details surrounding, and in any way bearing upon, his proposed pur-

chase, and therefrom understand that he takes the premises subject thereto, yet he might feel more secure if all the conditions be reduced to writing and incorporated into the contract. If any reservations to the owner are to be made, they may be enumerated; also any conditions as to rights of way, for the seller, or for the public, or for railroad, telegraph or telephone purposes; also building restrictions, use of property, color and race of future grantees, sale of liquors, etc. Or, if such conditions, commonly called covenants, already exist in the deed, or are on record, reference may be made to such deed or record, stating that the sale is made subject thereto, and that will be sufficient, without enumerating them again in the contract.

Also, as is done in many cases, the contract may provide that the deposit shall be made with a third party, or with some bank or trust company, instead of with the seller, accompanied with instructions to deliver the same to the seller when the conditions of the agreement are complied with. The deed is sometimes deposited at the same time, to be delivered to the buyer when the title is found sufficient, and the balance of the

money is paid. This is called an escrow.

**Form of Agreement of Sale Where All Cash is Not to Be Paid.**—Where only part of the purchase price is to be paid in cash, the following form of contract is binding upon all the parties until the terms of the agreement are fully completed. As in the preceding form, if there are any other conditions or agreements which it is desired to reduce to writing they may be incorporated therein by stating that the sale is made subject thereto. Samples of such stipulations will be found in the installment contract further on. This form of contract constitutes a conditional sale, the condition being that if the payments are not made at the times and in the manner stipulated, the buyer relinquishes all his rights under the contract, and it becomes null and void at the option of the seller. He also loses whatever sums of money he may have already paid in at the time he becomes in default. It is, in effect, the same as the regular installment contract, explained in detail under that heading.

AGREEMENT FOR THE SALE OF REAL ESTATE

**THIS AGREEMENT, made this (first day of**

June, in the year nineteen hundred and fifty), between (Judson Jamison, of the county of Kern, state of California), the party of the first part, and (George Goodhue, of the county of Ventura, state of California), the party of the second part, witnesseth: .That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained and made by and on the part of the said party of the second part, agrees to sell and convey unto the said party of the second part, and the said party of the second part agrees to buy, all that certain lot, piece, or parcel of land, situate, lying and being in the county of (Ventura, state of California)) and bounded and particularly described as follows, to-wit:

(Here describe the property, same as in the deed. Also it is well to refer to the number of the book and the page in which the record can be found in the county recorder's office), for the sum of (ten thousand dollars) in gold coin of the United States; and the said party of the second part, in consideration of the premises, agrees to buy and to pay to the said party of the first part the said sum of (ten thousand dollars), as follows, to-wit: .(One thousand dollars cash), receipt of which is hereby acknowledged, and (here state how and when and in what amounts the balance is to be paid).

It is agreed that all deferred payments shall bear interest at the rate of (seven) per cent per annum, payable (annually) from date.

All taxes and assessments now levied upon the said premises are to be paid by (as agreed).

All taxes and assessments levied upon the said premises subsequent to the date hereof are to be paid by (as agreed).

Taxes and assessments.....
Insurance .....
Leases .....
Rents .....

It is understood and agreed that time is of the essence of this contract, and should the said party of the second part fail to comply with any of the terms hereof, then the said party of the first part shall be released from all obligations either in law or equity to convey said property, and the said party of the second part shall waive and relinquish all right

**thereto, and to all moneys theretofore paid under this contract; but the said party of the first part, on receiving the full payments at the times and in the manner above mentioned, agrees to execute and deliver to the said party of the second part a good and sufficient grant deed to the premises herein described, accompanied with an unlimited certificate of title showing said premises to be free and clear of all encumbrances.**

**The stipulations and agreements aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties hereto.**

**In witness whereof, the parties hereto have affixed their hands the day and year first above written.**

**(Signature of seller.....)**
**(Signature of buyer.....)**

**Signed and delivered in the presence of:**
**(Names of witnesses).**

To the above, where the balance of the purchase price is not to be paid for some considerable time, may also be added agreements about keeping up insurance, destruction of property by fire, repairs, occupancy of the premises, or such other covenants and stipulations as the parties desire or the circumstances would seem to require.

**Form of Agreement of Sale for Part Cash and Mortgage.**—Where only part of the purchase price is to be paid in cash, and a mortgage is to be given for the balance, the following form of contract will meet the requirements:

AGREEMENT FOR THE SALE OF REAL ESTATE, WITH MORTGAGE

**THIS AGREEMENT, made this (first day of**

September, in the year nineteen hundred and fifty), between (Lemuel Lawrence, of the county of San Diego, state of California), the party of the first part, and (Martin Mason, of the county of Los Angeles, state of California), the party of the second part, witnesseth: .That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained and made by and on the part of the said party of the second part, agrees to sell and convey unto the said party of the second part, and the said party of the second part agrees to buy, all that certain lot, piece, or parcel of land, situate, lying and being in the county of (San Diego, state of California), and bounded and particularly described as follows:

(Here describe the property, same as in the deed), for the sum of (fifty thousand dollars), in gold coin of the United States; and the said party of the second part; in consideration of the premises, agrees to buy and to pay to the said party of the first part the said sum of (fifty thousand dollars), as follows, .to-wit: (Ten thousand dollars) upon the execution of the conveyance to the said party of the second part within (thirty) days from the date hereof, and the balance (five) years thereafter, secured by a mortgage on the above described premises for the sum of (forty thousand dollars). Said mortgage to bear interest at the rate of (seven) per cent per annum, payable (annually).

And the said party of the first part, on receiving such payment, and on the execution of the mortgage by the said party of the second part, at the time and in the manner above mentioned, shall, at his own proper cost and expense, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, to the said party of the second part, a good and sufficient grant deed to the said premises, accompanied with an unlimited certificate of title, showing said premises to be free and clear of all encumbrances.

The stipulations and agreements aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties hereto.

In witness whereof, the parties hereto have

**affixed their hands the day and year first above written.**

**(Signature of seller.....)**
**(Signature of buyer.....)**

**Signed and delivered in the presence of:**
**(Names of witnesses).**

Form of Contract of Sale by Corporation.—If it is a corporation which is making the contract, it should be so stated by starting the agreement in this manner:

**"This agreement, made this (first day of May, in the year nineteen hundred and fifty), between the (Royal Realty Company), a corporation organized and existing under the laws of the state of (California), the party of the first part," etc.**

Otherwise the above forms need no change, with the exception of the closing paragraph, which should read like this:

**"In witness whereof, the parties have affixed their hands, the said (Royal Realty Company) subscribing its corporate name and affixing its corporate seal by its (president and secretary), thereunto duly authorized the day and year first above written."**

The contract should then be signed with the corporation name, followed by the names of the president and secretary, or other officers authorized by the board of directors to make the contract. The corporation seal should also be impressed upon the instrument, and the name of a witness, if convenient, added.

Form of Agreement of Sale of Real

**Estate on Installments.**—Strange as it may seem, when the vast amount of business transacted in this manner is considered, there is no specific law in this state governing the sale of goods or real property on installments or partial payments. The result is, there is great freedom of contract in the matter of such sales, and, generally speaking, if the agreements do not violate the well-defined principles of contracts in their construction, the courts will enforce them according to their terms.

The form which follows embodies the language and construction usually employed in the best examples of such contracts as used by the land and building companies of the state which sell houses and lots on the installment plan, "like rent."

Under the terms of these agreements the title to the property remains in the seller until all the purchase price is paid. If the buyer fails to pay any of the installments as they become due, the seller may, at his option, cancel the contract, retain all the money already paid, and regain possession of the premises. If the buyer refuses to give up possession peaceably, the seller may then bring an

action for trespass and ejectment, with damages and costs added.

The seller is not compelled to consider the contract as cancelled upon default in the payments if he does not choose to. It is optional with him. Instead, he may sue for each payment as it becomes due and in default, or for all those which are in default. This will keep the contract in force, and any judgment rendered in favor of the seller may be collected out of any property belonging to the party in default which is not exempt from execution.

The seller has still another remedy when payment is in default. He may enforce performance of the contract by sueing for the entire balance due upon it; but by so doing the sale becomes absolute, and the title passes at once to the buyer.

As most of the dealers in lands and houses which sell the same on installments are incorporated, the sample form printed below presumes that the seller therein is a corporation. The resolution of the board of directors authorizing certain officers to make such contracts is embodied in it. This is a good idea, as it has the effect of making it part of the

agreement. Samples of the various sorts of stipulations or covenants most usually inserted in such contracts are also given. Of course, those which are favored can be used and the others left out, or different ones added. Or, if the stipulations desired are already on record in some manner, they may be omitted from the contract entirely, simply substituting in their stead a phrase substantially like this: "Subject to such conditions, restrictions, and reservations as are now of record on such lot in the office of the county recorder of Los Angeles county."

It is considered better practice, however, to enumerate and delineate all the desired stipulations in the contract itself.

INSTALLMENT AGREEMENT FOR THE SALE OF REAL ESTATE

**THIS AGREEMENT, made and entered into this first day of January, in the year nineteen hundred and fifty, between the New Century Improvement Company, a corporation duly organized and existing under the laws of the state of California, party of the first part, hereinafter designated as the seller, and Henry P. Lyon, party of the second part, hereinafter designated as the buyer, witnesseth:**

**That the said seller, for and in consideration of the payments this day made, and the covenants and agreements made by and on the part of the said buyer, hereinafter contained, and by virtue of and in pursuance of a resolution of its board of directors duly adopted at a meeting of said board of directors of said corporation had on the twentieth day of October,**

:948, and which said resolution is in the following words, to-wit: ."That the president and secretary be and they are hereby authorized and empowered for and on behalf of the corporation to enter into, make, execute, sign, acknowledge, and deliver any and all contracts, deeds, conveyances, or other writings necessary or proper to sell and convey to purchasers the lands of this corporation, and that all such ontracts be made in the name of this corporation, and be authenticated with its seal," agrees to sell and convey unto the said buyer, and said buyer agrees to buy, all that certain lot, piece, or parcel of land, situate, lying and being in the city of Wilmington, county of Los Angeles, state of California, and more particularly described as follows, to-wit: .Lot 21, block 84, of Goodhope tract, as designated and delineated upon a map of said tract now on record in book 31, page 62, of maps, in the office of the county recorder of Los Angeles county, state of California, for the sum of sixteen hundred dollars, in gold coin of the United States; and the buyer, in consideration of the premises, agrees to buy and pay to the seller the said sum of sixteen hundred dollars at the times and in the manner as follows, to-wit: .One hundred dollars upon the execution and delivery of this agreement, the receipt of which is hereby acknowledged, and the further sum of thirty dollars on the first day of February, 1930, and the further sum of thirty dollars on the first day of each and every month thereafter until the said total sum of sixteen hundred dollars is fully paid. All said deferred payments to bear interest at the rate of seven per cent per annum, said interest to be computed and payable semiannually from date.

The buyer is hereby given possession of the premises aforesaid, and in consideration thereof he hereby agrees to pay all state, county, and city taxes of every nature which may hereafter become due and payable on said premises, including all other assessments which may be levied thereon subsequent to the date hereof, and to keep the buildings thereon insured during the pendency of this agreement for the sum of two thousand dollars, loss if any payable to the seller as its interest may appear.

It is further covenanted and agreed by the parties hereto, as covenants running with the

land, and it is part of the consideration of this agreement, that the deed conveying title to the premises herein described shall contain and be subject to the following limitations, reservations and conditions, to-wit:

First. That no main building shall be erected or suffered to remain upon the premises herein described that is not reasonably worth twenty-six hundred dollars, and that said main building shall be erected before any other building on the property.

Second. That said main building shall not be less than two full stories in height.

Third. That said main building, including the porch or piazza, but not including the front steps, shall not be less than twenty-five feet from the front line of said lot.

Fourth. That said main building, or any part of the premises herein described, shall not be used for any other than residence purposes, with the customary outbuildings, including garage, which said outbuildings and garage shall be erected only upon the rear portion of said lot.

Fifth. That the said party of the second part, the buyer herein, shall not use, or cause to be used, or allow, or in any manner authorize, either directly or indirectly, said premises to be used, or any part thereof, for the purpose of manufacturing or vending intoxicating liquors for drinking purposes.

Sixth. That no part of said premises shall be sold, leased, or rented to, or suffered to be occupied by as tenants for hire or gratuitously, any person not of the white or caucassian race.

Seventh. That the said buyer shall not himself, nor shall he permit any other person or corporation to prospect or drill for or develop or produce oil or other hydro-carbon products.

Eighth. That there is hereby expressly reserved and excepted from the operation of this agreement to the party of the first part, the seller herein, their successors, heirs and assigns forever, the right of way for all purposes pertaining to the laying of and maintenance of pipes for water, gas, and sewers upon, over and across said premises, of such sizes, quantities and dimensions as may be reasonably required for the uses for which the same are reserved.

Ninth. Provided, further, that each of the

restrictions, covenants and conditions herein contained as to the sale of intoxicating liquors, the erection of houses and outbuildings, the development and production of oil or other like substances, and the occupancy of the premises by other than white persons, shall in all respects terminate and be of no further effect on and after the first day of January, 1970.

Tenth. It is also expressly agreed and understood by and between the parties hereto, that in the event of any of the covenants or conditions herein contained being or being held invalid or void, such invalidity or voidness shall in no way affect any valid covenant or condition herein contained.

And it is further covenanted and agreed, that should the buyer fail to make any of the payments as specified herein, or fail to comply with any of the foregoing reservations, conditions, and restrictions, then the seller shall be released from all obligations in law or equity to convey said property, and said premises shall immediately revert to the seller, and the seller shall be entitled to the immediate possession thereof, without further process of law, and this agreement shall become void and at an end, and the buyer shall waive and relinquish all right thereto, and to all moneys theretofore paid under this agreement; but the seller, on receiving the full payments at the times and in the manner above prescribed, agrees to then execute and deliver to the buyer a good and sufficient grant deed to the premises herein described, accompanied with a certificate of title from a reputable abstract company showing title vested in the New Century Improvement Company, free and clear of all encumbrances except as to restrictions, taxes, and assessments herein specified.

The stipulations, covenants and agreements aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

In witness whereof, the parties hereto have affixed their hands, the said New Century Improvement Company subscribing its corporate name and affixing its corporate seal by its president and secretary in pursuance of the

**aforementioned resolution thereunto authorizing them, the day and year first above written.**
**NEW CENTURY IMPROVEMENT COMPANY,**
**..... President**
**..... Secretary**
**Signature of buyer.....**
**Signed, sealed, and delivered in the presence of:**
**(Names of witnesses).**

Form of Optional Contract of Sale.—The following form of option for the sale of real estate is all that is usually necessary to bind the sale. It is supposed that the buyer has looked into the conditions attaching to the property before making his offer, and is taking it subject thereto, but if desired any number of stipulations as to title, encumbrances, etc., may be inserted in the contract.

REAL ESTATE OPTION

**(Sacramento, Cal., July 24, 1930).**

**Received of (Herbert Woodley) the sum of (fifty dollars), as part payment for the following described property, situate in the county of (San Joaquin, state of California), and more particularly described as follows:**
**(Description of property).**
**The entire price to be paid for the above described real property is (five thousand dollars), to be paid as follows:**
**(Terms of payment).**
**A good and sufficient deed, accompanied by an unlimited certificate of title showing title vested in (Frank Harris), to be executed and delivered by said (Frank Harris) to said (Herbert Woodley), or his assigns, upon the fulfillment and completion of the terms and conditions as above prescribed. Provided, however, that if the payments are not made by the said (Herbert Woodley) at the times and in the man-**

**ner above prescribed, then this contract to be void and of no effect, and both parties released from all obligations herein, and in that event the said (fifty dollars) paid on this date is to be retained by (Frank Harris) as consideration for this option.**

**(Signature of seller.....)**
**(Signature of buyer.....)**
**Signed and delivered in the presence of:**
**(Names of witnesses).**

Contract of Sale Binds Seller to Execute Good and Sufficient Conveyance.—As stated previously, the contract of sale conveys no interest in the land itself; but an agreement for the sale of real property OBLIGATES the seller to execute and deliver a deed of conveyance in form good and sufficient to pass the title thereto. The right of the purchaser to have such a title delivered to him, and the duty of the seller to convey it, does not grow out of or depend upon the agreement between the parties, but is given by law, on the general right of the purchaser to require it when the conditions of the contract are fulfilled. If the seller then refuses to convey, the buyer's remedy is an action for specific performance of the agreement, or for a return of the money paid in, which the court will enforce if it would be just and equitable to do so.

Or it may happen that the seller is un-

able to make the transfer as agreed in the contract. He may have been mistaken in his own title so he cannot convey. In such case the buyer may sue the seller and recover back what he has paid, with interest, and also the value of his improvements.

**Recording Contract of Sale.**—Not very many of the contracts for the sale of real estate seem to be recorded, presumably for the reason that so many of the real estate transactions are either made on the installment plan by large companies, or are completed in escrow.

Such contracts may be recorded, however, and in important cases which take some time to complete it is probably well to do so. The effect of recording or not recording an agreement of sale is just the same as the effect of recording or not recording a deed, which is explained fully in the chapter on the "Transfer of Real Property." If the contract is to be recorded it must first be acknowledged or proved, forms for which are also to be found in that chapter, under the heading of "Acknowledgment and Proof of Deeds."

**Seals.**—There is no distinction in this state between a sealed and an unsealed

instrument, and it is not necessary to use either a wafer or a pen scroll in any form after a signature to a contract of sale to represent a seal. Neither is it necessary to say, "Witness my hand and seal;" "Witness my hand" is sufficient.

Witnesses.—The law does not require that there shall be witnesses to a contract for the sale of real property, but it is well to have at least one witness, for the purpose of more conveniently proving the instrument, if necessary. Better still to have two, so that either may testify, if needed, should the other be unable to appear.

**Assignment of Contract of Sale.**—A contract for the sale of real property may be assigned in the same manner and with the same effect as any other contract may be. The assignment carries with it, of course, only such right, title, and interest as the assignor may have in the contract at the time of the assignment. This is popularly called his "equity," although in reality there is no recognized equity in the realty involved in a contract of sale.

There may be as many assignments of the contract as there are new owners of the so-called equity; that is, every as-

signee may assign his interest to another person, and so on, ad infinitum.

Forms for Assignment of Contract.—The contract of sale may be assigned, if it has not been recorded, by endorsement on the instrument itself, in the following language:

ASSIGNMENT OF UNRECORDED CONTRACT

**FOR VALUE RECEIVED, I do hereby sell, assign, and transfer to (Lewis Leavitt), his heirs and assigns, all my right, title and interest in, to, and under the within instrument, together with and including all moneys heretofore paid thereunder.**

**(Signature of assignor.....)**

**(Date.....)**

The actual or real consideration for an assignment need not be shown.

If, after the assignment, it is desired to record the contract, both the original agreement and the assignment must be first acknowledged.

If the original contract has already been recorded, then the following form of assignment should be used:

ASSIGNMENT OF RECORDED CONTRACT

**KNOW ALL MEN BY THESE PRESENTS: That (Samuel Simpson), the party of the first part, for and in consideration of the sum of (ten) dollars, in hand paid by (Thomas Taber), the party of the second part, the receipt of which is hereby acknowledged, does by these presents grant, assign, transfer, and set over unto the said party of the second part, all his right, title, and interest to, in, and under a certain contract or agreement of sale, bearing date the (nineteenth day of July, 1950), made**

**and executed by (name of seller), to (Samuel Simpson), and recorded in book number (3044) of Deeds, at page (190), in the office of the county recorder of (San Bernardino) county, state of (California), of and to the real property more particularly described as follows, to-wit:**

**(Here describe property, same as in the agreement).**

**In witness whereof, the said party of the first part has hereunto set his hand this (first day of December, 1950).**

**(Signature of assignor.....)**

**Signed and delivered in the presence of:**

**(Names of witnesses).**

The assignment should be acknowledged and recorded also, in the same recorder's office where the original contract is recorded.

But if the original contract is not recorded, the assignment of it cannot be.

Form of Contract for Exchange of Property.—Where parties desire to exchange properties without the employment of an agent, the following form of contract will answer the purpose admirably. If to be exchanged through the medium of an agent, the same form with commission clauses added will be found in the chapter on "Real Estate Agents."

AGREEMENT FOR EXCHANGE OF REAL ESTATE

**THIS AGREEMENT witnesseth: That (I, Jacob Jackson), am the owner of the following described first piece of property, situate, lying and being in the (city of Monrovia, county of Los Angeles, state of California), and more particularly described as follows, to-wit:**

**(Give description here, same as in deed, also stating encumbrances and restrictions, if any), which I desire to exchange for the following described second piece of property, owned by (Jeremiah Johnson), situate, lying and being in the (city of Compton, county of Los Angeles, state of California), and more particularly described as follows, to-wit:**

**(Here deserihe second piece of property sufficiently to identify it, aiso stating encumbrances and restrictions, if any),**

**upon the terms and conditions as set forth below, to-wit:**

**(Here set forth in detail the terms of the exchange).**

**And I hereby agree, that if the said (Jeremiah Johnson) shall accept the proposition to exchange the above described property on the above terms, that I will, within (thirty days) thereafter, furnish a certificate of title, or abstract, from some reputable abstract company, showing the said property to be free and clear of all encumbrance, except (state encumbrance here, if any), and then, upon the fulfiliment of said terms and conditions, execute and deliver a good and sufficient grant deed conveying title to the property first above described to the said (Jeremiah Johnson), his assigns or representatives.**

**I also agree to allow a reasonable time for the furnishing of a certificate of title of the second of the above described properties, and a good and sufficient grant deed conveying the same.**

**(Signature of first party.....)**

**(Dated at .....)**

The following form of acceptance of the above offer may be written on the same sheet of paper, or on a separate sheet and attached thereto. When properly signed and dated, the contract between the parties is complete:

## AGREEMENT OF ACCEPTANCE OF OFFER TO EXCHANGE PROPERTY

**THIS AGREEMENT witnesseth: .That (Jeremiah Johnson), owner of the second piece of property described in the within instrument, hereby accepts the proposition of exchange made therein, and upon the terms and conditions stated therein, and agrees, within (thirty days), to furnish a certificate of title, from a reputable abstract company, showing the said property to be free and clear of all encumbrance, except (state encumbrance here, if any), and then, upon the fulfillment of said terms and conditions, to execute and deliver a good and sufficient grant deed of said property to the said (Jacob Jackson), his assigns or representatives.**

**(Signature of second party.....)**

**(Dated at .....)**

CHAPTER IV.

# TRANSFER OF REAL PROPERTY

Transferring real property is an act of the parties, or of the law, by which the title to the property is conveyed from one living person to another.

The transfer can be made only by an instrument in writing, usually called a deed, or grant.

The term "grantor" is used to signify one who conveys land; and he to whom the conveyance is made is called the "grantee."

When a transfer of real property is accomplished, it is not the corporeal or actual property itself which is conveyed, but rather the incorporeal something which we speak of as the "title."

Title may be said to be the means whereby the owner of real property has the just and legal possession and enjoyment of it. In other words, it is the evidence which a person has of the right to

the possession of property—the ownership of it. Therefore it is that when the property is sold it is the title—the evidence of ownership—in the form of a grant or deed thereof, which is transferred.

The transfer must be accompanied with certain formalities, and until these are fully complied with there can be no alienation or conveyance of the title by one person in favor of another. The process of conveyance has, however, been much simplified of recent years, although many forms of deeds still contain an unrequired amount of verbal rubbish and redundant phraseology.

Following in this chapter will be found the various forms of grants or deeds now in common use in this state, with various useful comments and explanations.

## DESCRIPTION OF PROPERTY.

**What Is Sufficient Description**—The premises to be transferred may be described in detail by measurements according to the survey, or it may be described as being the premises located at such and such a number on such and such a street in such and such a town; or if the premises are known by some

popular name, such as the "Kearney ranch," for instance, it will be sufficient to describe them simply by such name.

It is also a sufficient description to refer to another description in some other deed, or plot, map, or other instrument on record in a public office.

## CONSIDERATION FOR TRANSFER

**Kinds of Consideration**—There must be a consideration for every valid deed.

The consideration may be either "good" or "valuable."

Good consideration is founded upon blood relationship, or natural love and affection, such as exists between parent and child, or husband and wife. Such consideration, unless used as the basis of intent to defraud creditors or others, is sufficient in law to justify the transfer.

Valuable consideration is founded upon something deemed valuable, such as money, stocks, other lands, goods, services, or the like, which the law esteems an equivalent for the grant.

Marriage is a valuable consideration; so is support and maintenance.

The true consideration need not be expressed in the deed. It may be stated as one dollar, or any sum, or it need

not be mentioned at all. If it becomes necessary to prove the true consideration the law permits it to be shown by oral testimony.

## WARRANTY.

**Is Implied by Law.**—The forms of deeds now generally used here are the simple "Grant Deed," and the "Grant, Bargain and Sale Deed." Neither form contains any of the covenants of warranty often found in conveyances, for the reason that the law provides that every "grant" of real property carries with it an implied warranty, which may be sued upon the same as if inserted in the deed, thereby rendering it unnecessary to insert warranty clauses in the instrument itself. The language of the code is as follows:

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee and his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the

execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly stated in the conveyance.

"Encumbrances" includes taxes, assessments, and all liens upon real property.

## PROPERTY RIGHTS OF HUSBAND AND WIFE.

**Necessity for Signatures of Both to Transfer.**—The property rights of husband and wife in this state, and the law as to the conveyance of the same by either or both, is fully set forth in the chapter on "Ownership and Control of Real Property."

## FORMS FOR DEEDS.

The following forms represent about all those which the conveyancer usually finds necessary:

Grant Deed, Code Form.—Realizing that the usual forms of deeds contained too much useless verbiage, the legislature prescribed substantially the form of grant deed which follows as being sufficient to convey real property in this state. Nothing could be simpler; at the same time nothing more is necessary. It fills all the requirements of a valid conveyance, and is rapidly coming into general use:

FORM FOR GRANT DEED

**(Bernard Bailey), of the (County of Inyo, state of California), for and in consideration of the sum of (one hundred dollars), the receipt whereof is hereby acknowledged, does hereby grant to (Charles Conley) all that real property situate in the county of (Inyo, state of California), described as follows:**

**(Description of property).**

**Witness my hand this (first day of March, nineteen hundred and fifty).**

**Signed and delivered in the presence of:**

**(Names of witnesses).**

**(Signature of grantor.....)**

Grant, Bargain and Sale Deed.—This is another simple form of deed which shares the popularity of the somewhat simpler grant deed given above:

FORM FOR GRANT, BARGAIN AND SALE DEED

**THIS INDENTURE, made the (fourth day of April, in the year of our Lord nineteen hundred and fifty), between (David Dickinson), party of the first part, and (Daniel Derondo), party of the second part,**

**Witnesseth: That the said party of the first**

**part, for and in consideration of the sum of (one hundred dollars), to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land situate, lying and being in the (county of Santa Barbara, state of California), and bounded and particularly described as follows, to-wit:**

**(Description of property).**

**Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.**

**To have and to hold, all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.**

**In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.**

**(Signature of grantor.....)**

**Signed and delivered in the presence of:**
**(Names of witnesses).**

Warranty Deed.—This form of deed is not very much used in this state, for the reason, as previously stated, that the covenant of warranty is implied by law in the use of the word "grant."

FORM FOR WARRANTY DEED

**THIS INDENTURE, made the (tenth day of May, in the year of our Lord nineteen hundred and fifty), between Howard Hendricks, the party of the first part, and (Abel Apperson), the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of (one thousand dollars), gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowldged, does by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, and to**

**his heirs and assigns forever, all that certain lot, piece, or parcel of land, situate, lying and being in the (county of Ventura, state of California), and bounded and particularly described as follows, to-wit:**

**(Description of property).**

**Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.**

**To have and to hold the same to the said (Abel Apperson), his heirs and assigns forever, and the said first party does hereby covenant with the said (Abel Apperson) and his legal representatives that the said real estate is free from all encumbrances, and that he will, and his heirs, executors and administrators shall, warrant and defend the same to the said (Abel Apperson), his heirs and assigns forever, against the just and lawful claims and demands of all persons whomsoever.**

**In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.**

**(Signature of grantor.....)**

**Signed and delivered in the presence of:**

**(Names of witnesses).**

Quitclaim Deed.—This form of deed is only used where the grantor has an interest in land as one of several heirs, or as a joint owner, and wishes to convey his share to another heir, or to another joint owner; or in cases where a person has some minor interest in land, or some supposed or possible interest which is not clearly defined, which he wishes to convey to the owner of the fee for the purpose of clearing the title.

A quitclaim deed contains none of the

covenants of warranty, but purports to convey and does convey simply whatever interest the grantor may be possessed of, or is supposed to be possessed of, at the time of its execution. The grantor warrants nothing, and the grantee is said to take the risk of the title conveyed by the quitclaim, unless there is fraud.

FORM FOR QUITCLAIM DEED

**THIS INDENTURE, made the (fourteenth day of October, in the year of our Lord, nineteen hundred and fifty), between (Ebenezer Ewing), the party of the first part, and (Caleb Cochran), the party of the second part, witnesseth: .That the said party of the first part, for and in consideration of the sum of (one hundred dollars), to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released and forever quitclaimed, and by these presents does remise, release and forever quitclaim, unto the said party of the second part and to his heirs and assigns, all that certain lot, piece, or parcel of land, situate, lying and being in the (county of Los Angeles, state of California), and bounded and particularly described as follows, to-wit:**

**(Here describe the property or the interest to be quitclaimed).**

**Witness my hand the day and year first above written.**

**(Signature of grantor.....)**
**Signed and delivered in the presence of:**
**(Names of witnesses).**

Deed of Gift.—As stated at the beginning of this chapter, love and affection is a sufficient consideration for the transfer of property. The following

form will suffice where the conveyance is intended as a gift, without money consideration:

FORM FOR DEED OF GIFT

**THIS INDENTURE, made the (second day of June, in the year of our Lord nineteen hundred and fifty), between (Edward Edwards) of the (county of Fresno, state of California), the party of the first part, and (Frank Folsom Edwards), the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the love and affection which the said party of the first party has and bears unto said party of the second part, as also for the better maintenance, support, protection and livelihood of said party of the second part, does by these presents, give, grant, alien and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land, situate, lying and being in the (city of Lodi, county of Fresno, state of California), and bounded and particularly described as follows, to-wit:**

**(Description of property).**

**Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.**

**To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns forever.**

**In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.**

**(Signature of grantor.....)**

**Signed and delivered in the presence of:**
**(Names of witnesses).**

Deed by Corporation.—The property of a corporation can be sold and transferred only by resolution of its board

of directors or stockholders. The officers, as such, have no right or authority to dispose of its possessions, unless specially authorized so to do. When so authorized the following form is usually employed:

### FORM FOR BARGAIN AND SALE DEED BY CORPORATION

**THIS INDENTURE, made the (third day of January, in the year of our Lord nineteen hundred and fifty), between (Standard Manufacturing Co.), a corporation organized under the laws of the state of California, and having its principal place of business in the (city of San Francisco, state of California), the party of the first part, and (George Goodhart), the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of (ten dollars), to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents does grant, bargain and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land situate, lying and being in the (county of San Mateo, state of California), and particularly described as follows, to-wit:**

**(Description of property).**

**Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.**

**To have and to hold all and singular the said premises, together with the appurtenances, unto the party of the second part and to his heirs and assigns forever.**

**In witness whereof: The said party of the first part has caused its corporate name and seal to be affixed by its (president) and (secre-**

**tary) thereunto duly authorized the day and year in this indenture first above written.**
**(Corporate seal)**
**By....., President**
**By....., Secretary**

Joint Tenancy Deed.—The peculiar feature of this form of deed is the right of survivorship. That is, where property is conveyed to two or more persons as joint tenants, each holds an equal share, with equal rights in all respects, and upon the death of one joint tenant the estate passes in its entirety to the survivors, and finally to the last survivor, and not to the heirs or representatives of the deceased. This form of deed is used quite frequently in conveying property to husband and wife:

FORM FOR JOINT TENANCY DEED, WITH RIGHT OF SURVIVORSHIP

**THIS INDENTURE, made this (sixth day of November, in the year of our Lord nineteen hundred and fifty), between (Lewis Lawson), the party of the first part, and (William Whiteside and Helen Whiteside), husband and wife, the parties of the second part, as joint tenants with right of survivorship, witnesseth: That the said party of the first part, for and in consideration of the sum of (ten dollars), to him in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part as joint tenants, and to the survivor of them, his or her heirs and assigns forever, all that certain lot, piece, or parcel of land situate, lying and being in the (county of Santa Clara, state of California), and bounded and particularly described as follows, to-wit:**

**(Description of property).**

**Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.**

**To have and to hold, all and singular the said premises, together with the appurtenances, unto the said parties of the second part as joint tenants, and to the survivor of them, his heirs and assigns forever.**

**In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.**

**(Signature of grantor.....)**

**Signed and delivered in the presence of:**
**(Names of witnesses).**

## SUGGESTIONS FOR USE OF THE FORMS.

Changing the Phraseology.—In using the forms in this chapter, the nouns, pronouns and verbs should of course be changed to suit where there is more than one grantor or grantee, or the grantor or grantee is a female or a corporation.

In Case of Mortgage.—If the property to be conveyed is mortgaged, the following clause should be inserted in the deed after the description:

**Subject to a mortgage of (five hundred dollars), payable to (Simon Simpson), and paying interest at the rate of (seven) per cent per annum, which the party of the second part assumes and agrees to pay.**

Stating Marital Condition of Grantor.—It is customary nowadays in convey-

ancing to insert in the deed, after the name of the grantor, a phrase indicating the marital state of said grantor, as per the following examples:

**"Between John Brown, a widower, the party of the first part," etc.**

**"Between Thomas Smith, a single man, the party of the first part," etc.**

**"Between Sarah Thompson, a widow, the party of the first part," etc.**

**"Between Jennie Roe, a single woman, the party of the first part," etc.**

Requiring Signatures of Both Husband and Wife.—As explained in a previous chapter, it is not necessary to have the signatures of both husband and wife to an instrument of conveyance of the separate property of either, but for the reasons there given it is now customary to require both. Therefore deeds by married persons should be worded this way, placing the name of the one in whose name the property stands first:

**"Between James Gibson and Hannah Gibson, husband and wife, the parties of the first part," etc.**

**"Between Mabel Morrison and Walter Morrison, husband and wife, the parties of the first part," etc.**

When Grantor Must State Former Name.—Any person in whom the title to real estate is vested, who shall after-

wards, from any cause, have his or her name changed, must, in any conveyance of said real estate so held, set forth the name in which he or she acquired title to said real estate. Example:

**"Between Clara Burton, formerly Clara Misner, the party of the first part," etc.**

Restrictions.—Where several restrictions are to be inserted in the deed it is well to number them in rotation for convenience. The following examples cover nearly all those usually employed, but others may be easily framed along the same lines:

**Provided, however, that this conveyance is made and accepted on each of the following conditions, which are hereby made covenants running with the land, to-wit:**

**First. That no main building shall be erected or suffered to remain upon the premises herein conveyed that is not reasonably worth twenty-six hundred dollars, and that said main building shall be erected before any other building on the property.**

**Second. That said main building shall not be less than two full stories in height.**

**Third. That said main building, including the porch or piazza, but not including the front steps, shall not be less than twenty-five feet from the front line of said lot.**

**Fourth. That said main building, or any part of the premises herein described, shall not be used for any other than residence purposes, with the customary outbuildings, including garage, which said outbuildings and garage shall be erected only upon the rear portion of said lot.**

**Fifth. That the said party of the second part, the buyer herein, shall not use, or cause to be used, or allow, or in any manner authorize,**

either directly or indirectly, said premises to be used, or any part thereof, for the purpose of manufacturing or vending intoxicating liquors for drinking purposes.

Sixth. That no part of said premises shall be sold, leased, or rented to, or suffered to be occupied by as tenants for hire or gratuitously, any person not of the white or caucassian race.

Seventh. That the said buyer shall not himself, nor shall he permit any other person or corporation to prospect or drill for or develop or produce oil or other hydro-carbon products.

Eighth. That there is hereby expressly reserved and excepted from the operation of this agreement to the party of the first part, the seller herein, their successors, heirs and assigns forever, the right of way for all purposes pertaining to the laying of and maintenance of pipes for water, gas, and sewers upon, over and across said premises, of such sizes, quantities and dimensions as may be reasonably required for the uses for which the same are reserved.

Ninth. Provided, further, that each of the restrictions, covenants and conditions herein contained as to the sale of intoxicating liquors, the erection of houses and outbuildings, the development and production of oil or other like substances, and the occupancy of the premises by other than white persons shall in all respects terminate and be of no further effect on and after the first day of January, 1970.

Tenth. It is also expressly agreed and understood by and between the parties hereto, that in the event of any of the covenants or conditions herein contained being or being held invalid or void, such invalidity or voidness shall in no way affect any valid covenant or condition herein contained.

And it is further covenanted and agreed that upon the breach of any of the foregoing conditions and restrictions, prior to the first day of January, 1970, that the title to said premises shall immediately revert to and vest in the said party of the first part, his heirs or representatives, and he shall be entitled to the immediate possession thereof; but such reversion shall not affect the lien of any mortgage which in good faith may then be existing upon said property, but such mortgage shall remain a valid encumbrance thereon; and provided further, that the

**mortgagee, or his successors in interest, whether by purchase or otherwise, shall be bound by the covenants herein contained.**

## ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS.

**Definition.**—To acknowledge an instrument is to appear and admit or avow, under oath, before a proper officer or court, that the person so appearing and taking the oath is the person who executed the instrument, and that the signature is his signature, or that he authorized it to be done and subscribed for him, for the purpose of having a certificate attached which will qualify the instrument to be admitted in evidence, or to be recorded, or both, without further proof of genuineness.

**Acknowledgment or Proof of Instruments Necessary Before Recording.**—Before a deed, or contract of sale of real property, or other instrument, can be recorded, it must be acknowledged or proved before a person authorized by law to take such acknowledgment or proof. The instrument can then be presented to the county recorder to be spread upon the public records at any time thereafter whenever it may be desired to do so.

**Who May Take Acknowledgments or Proof of Instruments.**—The proof or acknowledgment of an instrument may be made at any place within this state before a justice of the supreme court, or a clerk of the same, or a judge of a superior court.

Within the city, county, city and county, or township, for which the officer was appointed or elected, before either a notary public; a justice of the peace; a county recorder; a court commissioner; a clerk of a court of record.

Or, when any of the officers mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

**Forms for Acknowledgment of Instruments.**—The majority of instruments are acknowledged before notaries. Many of them are not attorneys, and a considerable number have but limited experience. They are supposed to have proper forms for acknowledgments, but it is just as well to read them over carefully to see if they comply with the provisions of the law.

An officer taking the acknowledgment of an instrument must endorse thereon,

or attach thereto, a certificate substantially as follows, together with an impression of his seal, and the date when his commission expires, if a notary:

ACKNOWLEDGMENT OF INSTRUMENT

**State of California,**
**ss.**
**County of Inyo,**
**On this (twentieth day of June, in the year nineteen hundred and fifty), before me (William Watkins), a notary public in and for said county, residing therein, duly commissioned and sworn, personally appeared (Lemuel Lewis) and (Lucy Lewis), known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.**
**Witness my hand and official seal.**
**(Seal) (WILLIAM WATKINS),**
**Notary Public in and for said county.**
**My commission expires:**
**(Date when it expires).**

The acknowledgment of an instrument must not be taken unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf.

If the officer taking the acknowledg-

ment is not personally acquainted with the party executing the instrument, it is his duty to demand a credible witness whom he knows. The latter part of the form should then be changed to read like this:

**Personally appeared (So and So), proved to me on the oath of (Andrew Ackerman), a credible witness, to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.**

If the execution of the instrument is by a corporation, the form should read like this:

**Personally appeared (So and So), known to me to be the (president), and (So and So), known to me to be the (secretary, or whatever authorized officer) of the corporation described in and that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.**

If the instrument is executed by a person under a power of attorney, the language of the form should be changed to read like this:

**Personally appeared (So and So), known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of (Byron Booth), and acknowledged to me that he subscribed the name of (Byron Booth) thereto as principal, and his own name as attorney in fact.**

Any acknowledgment taken outside this state in accordance with the laws

of the place where the acknowledgment is made, shall be sufficient in this state without further acknowledgment within this state.

## RECORDING DEED.

**Effect of Recording or Non-Recording.**—Provision is made by the law of the state for the recording or spreading upon the public records of all deeds or other instruments in any way affecting real property, at the option of the interested parties. The recordation of a deed is not compulsory. It is done for the simple purpose of giving public notice of the transaction, and of the interests acquired thereby.

An unrecorded deed is valid between the parties; it has the same force and effect as if recorded. An unrecorded deed is void only as to creditors and subsequent bona fide purchasers or encumbrancers in good faith without notice. That is to say, if Jones sells his property to Brown, and Brown does not record the deed, the creditors of Jones, or subsequent purchasers from him, if he were dishonest enough to sell the property again, would have a valid lien against the property if their judgments

or deeds were recorded before Brown's; provided, of course, they had no personal or actual knowledge of the fact that the property had been previously sold to the latter. In other words, so long as the property stands on the public records in Jones' name, the law presumes it to belong to him so far as all other persons besides himself and his grantee are concerned.

**When Instrument Is Deemed to Be Recorded.**—An instrument is deemed to be recorded when, after being duly acknowledged, or proved and certified, it is deposited in the recorder's office, with the proper officer, for record.

## POWER OF ATTORNEY.

**Definition.**—A power of attorney is an authority given by one person to another to transact business for him and in his name. The extent of the authority is limited, of course, by the language of the instrument. It may be general to transact all business, or special, to do a certain thing. The person to whom such an authority is given is called an "attorney in fact."

**Power of Attorney to Transfer Real Property.**—The owner of real property

may authorize another person to find a purchaser for it, and execute a contract of sale thereof, by any form of simple writing, but he can confer authority to make the actual conveyance for and in his name only by means of a written power of attorney. The person named in the instrument then has power to do any lawful act which his principal could do, and it will be binding upon the principal with as full force and effect as if done by the principal himself.

When an attorney in fact executes an instrument conveying any estate in real property he must, however, first subscribe the name of his principal to the instrument, followed by his own name as attorney in fact.

**Must Be in Writing.**—Every power of attorney must be in writing. It cannot be given verbally under any circumstances.

**Form for Power of Attorney.**—The following form for the purpose of delegating power to sell and transfer real property to an attorney in fact is well adapted to the purpose. It is designed to be signed by both husband and wife, which is generally required. Of course, if it is not necessary to include the wife

she can be left out of it. The price at which the property is to be sold can be inserted in the form, if desired, and the attorney in fact would have to conform thereto.

POWER OF ATTORNEY

**BE IT KNOWN that (Thomas Tomlon) and (Teresa Tomlon), his wife, do, by these presents, constitute and appoint (Timothy Turpin) their attorney in fact, with full authority to sell and convey, and to receive the price thereof, without reservation of community right, or of any right whatsoever, the following described real property, to-wit:**

**(Describe property, same as in the deed).**

**And to execute a good and sufficient deed thereof to the purchaser; and, generally, to do all acts necessary for conveying as complete a title thereto as the grantors of said power could themselves convey; hereby covenanting with all whom it may concern to ratify and confirm all lawful acts done in pursuance of this power as fully to all intents and purposes as though done in their own proper persons.**

**(Signatures .....)**

**Witness our hands this (fifteenth day of January, 1950).**

**Executed in the presence of:**

**(Names of witnesses).**

Recording Power of Attorney.—A power of attorney to transfer real property must be executed, acknowledged and recorded, before the grant is, in order to make the conveyance valid, and also to keep the chain of title perfect and in proper sequence. Otherwise there would be no public evidence of the right of the attorney in fact to make the transfer.

**Revoking Power of Attorney.**—Whenever, by reason of the sale of the property by the owner himself, or for any other valid reason, it is desired to revoke a power of attorney, the only manner in which it can be done is by another instrument formally withdrawing or revoking such power, which must also be acknowledged and recorded in the same manner and in the same county recorder's office in which the instrument containing the power of attorney was recorded. This is a very important matter, which should always be attended to promptly when the occasion for it arises; for until it is done the authority of the attorney in fact remains in full force and effect, which might lead to serious complications if the property had been otherwise disposed of without his knowledge.

**Form for Revoking Power of Attorney.**—The following form, easily adaptable to the circumstances, is about what is required for the purpose:

**BE IT KNOWN that, whereas we (Thomas Tomlon), and (Teresa Tomlon), his wife, did, by warrant and power of attorney, in writing, bearing date the (fifteenth day of January, 1950), make, constitute, and appoint (Timothy Turpin) our true and lawful attorney for the purposes and with the powers therein set forth, as will more fully appear by reference thereto, or**

**to the record therof, made on the (date when recorded, if recorded, in book number , of powers of attorney, page , in the office of the county recorder of the county of ).**

**Now, therefore, we the said grantors of the power of attorney above mentioned, for divers good causes and considerations us hereunto moving, have revoked, countermanded, annulled, and made void, and by these presents do revoke, countermand, annul, and make void the said warrant or power of attorney, and all power and authority thereby given, or intended to be given, to the said (Timothy Turpin).**

**(Signatures .....)**

**Witness our hands this (date).**

**Executed in the presence of:**

**(Names of witnesses).**

## DEED BY MINOR.

When Void, When Voidable.—A minor cannot, under the age of eighteen, make any valid conveyance of any interest in real property.

The contract of a minor over the age of eighteen is not void, but is voidable; that is, he may disaffirm or repudiate it at any time before majority, or within a reasonable time thereafter.

## WITNESSES.

Not Required, But Well to Have Them.—The law does not require that there shall be witnesses to a grant or deed of real property, but it is well to have at least one witness, for the purpose of more conveniently proving the instrument, if necessary. Better still to

have two, so that either may testify, if needed, should the other be unable to appear.

## SEALS.

**Not Necessary to Use Them.**—There is no distinction in this state between a sealed and an unsealed instrument, and it is not necessary to use either a wafer, or a pen scroll in any form, after a signature to a grant or deed of real property, to represent a seal. Neither is it necessary to say, "Witness my hand and seal"; "Witness my hand" is sufficient.

## ITEMS

**Useful Things to Remember.**—The grant should be clear and distinct, as free from uncertainty as possible. When the terms are doubtful, it is construed in favor of the grantee and against the grantor.

The grant must be complete before it is delivered. Alterations or filling out of the blanks after delivery, will not remedy defects, or change the original conditions.

The grantor should sign his name precisely as it is written in the body of the grant.

The grant takes effect only upon its delivery by the grantor to the grantee.

Delivery is absolutely essential to the validity of a grant. There is actual delivery when it is actually placed in the hands of the grantee, and there is constructive delivery when it is placed under control of the grantee, where he can readily obtain actual possession. Either is sufficient delivery.

A grant duly executed is presumed to have been delivered at its date, and in absence of proof to the contrary, such delivery will be taken for granted.

Redelivering a grant to the grantor or cancelling or destroying the same, does not operate to re-transfer the title. In all cases a new instrument must be made out, transferring the title back to the grantor, and properly signed and acknowledged.

Unless the grant be delivered during the lifetime of the grantor it will be of no effect. But the delivery may be either to the grantee himself, or to some third person, with instructions to deliver the instrument to the grantee at some future time. The latter is called an escrow.

CHAPTER V.

# LANDLORD AND TENANT

If one may judge by the great amount of space devoted to this subject in the law books, and in the reports of the decisions of the courts, there are but few questions which have given more trouble in the solving than those involved in the legal relations between landlord and tenant; and it may further be said that the general public, as a rule, is woefully deficient in its understanding of the laws regulating these relations.

This is not much to be wondered at where there are so many modifications and extensions of the general principles underlying this relationship as are to be found in different jurisdictions, and so many contrariwise rulings thereon.

Therefore, perhaps no subject will be of more practical importance to a large number of people than this one concerning landlord and tenant, their rights and obligations under the law, the making of leases and the manner or mode of

using leased or hired property, since the far greater portion of mankind lives in or otherwise occupies the premises of another.

In California the common law practice has been changed in many instances by statute; therefore in this article an endeavor will be made to make as plain as possible just what is the law and the accepted practice in this state, irrespective of what it may be in other places.

## WRITTEN AND VERBAL LEASES

**Where Term is for More Than Year Lease Must Be in Writing.**—A lease for a term LONGER than ONE YEAR must be in writing, and of course must be signed by all parties to it.

**Assignment or Sublease of Written Lease.**—Where lease is in writing, assignment or sublease, or lessor's consent to assign or sublease should be in writing also.

**Where Term Does Not Exceed One Year Lease May Be Verbal.**—A lease for a period NOT EXCEEDING ONE YEAR may be verbal, and it will have all the effect and be just as valid as if in writing.

**Assignment or Sublease of Verbal**

**Lease.**—Where lease is verbal, assignment or sublease, or lessor's consent to assign or sublease, may be verbal unless otherwise provided.

## LEASE BY AGENT

**Authority Must Be in Writing.**—A lease made by the agent of the owner is of as full force and effect as if made by the owner himself; but in all cases where the law requires the lease to be in writing the AGENT'S AUTHORITY to execute the lease must also be IN WRITING, and signed by the owner, or some one empowered to act for him. Otherwise it will be invalid.

Where the lease is a verbal one the agent's authority to execute it may also be verbal.

A mere undertaking upon the part of the agent, however, to find a tenant for the owner, where the instrument is to be executed by the owner, need not be in writing.

Where the agent is vested lawfully with authority to make the lease, and also with general power to conduct the business connected with the hiring, notices to the tenant to pay rent, or to

quit, or otherwise, are also as valid as if given by the owner.

**Lease by Minor.**—A minor cannot, under the age of eighteen, make any valid lease of any interest in real property.

The contract of a minor over the age of eighteen is not void, but is voidable; that is, he may disaffirm or repudiate it at any time before majority, or within a reasonable time thereafter.

## LIMIT OF TERM OF LEASE.

**Of Agricultural Land.**—No lease or grant of land for agricultural or horticultural purposes, in which shall be reserved any rent or service of any kind, shall be valid for a longer period than FIFTEEN YEARS.

**Of City Lots.**—No lease or grant of any town or city lot, in which shall be reserved any rent or service of any kind, shall be valid for a longer period than NINETY-NINE YEARS.

**Of Property of Municipality, Minor, or Incompetent Person.**—Provided, that the property of any municipality, or any minor or incompetent person, shall not be leased for a longer period than TEN YEARS.

## COMPUTING TERM OF HIRING.

**Of Property Other Than Lodgings and Dwelling Houses.**—Unless the intention is otherwise expressed at the time of hiring, real property, other than lodgings and dwelling houses, is presumed to be hired for one year, unless possibly there is a local custom to the contrary.

To illustrate: If a merchant rents a store at so much per month, without anything being said as to how long he will retain possession of it, he will be presumed to have taken it for one year, and he will be liable for the rent for that period if the landlord chooses to hold him to it. But if at the time of hiring he states that he will take the store from month to month, without any definite number of months being specified, then he can be held liable for one month only, if he gives the proper notice of his intention to quit.

The same rule applies to any property which is not to be used simply for residence purposes.

**Of Lodgings and Dwelling Houses.**—Dwelling houses and lodgings are presumed to be, in the absence of any

agreement to the contrary, taken for such length of time as the parties adopt for the estimation of the rent.

To illustrate: If the rent agreed upon is so much per week, then the hiring is presumed to be by the week; if the rent is so much per month, then the hiring is by the month; if so much per year, then the hiring is by the year. In the absence of any agreement as to the length of the period of the hiring, or of the rent, or the manner in which it is to be estimated, the hiring is presumed to be by the month.

## PAYMENT OF RENT.

**Is Payable By Law at End of Period.**—In the absence of any agreement as to when the rent is to be paid, the law prescribes that it is not due until the expiration of the period of hiring; that is, at the end of the day, week, month, or year for which the premises are presumed to be taken according to the rule for estimating the period of hiring.

Local custom, however, regulates to a large extent the manner of paying the rent, and in case of disputes or actions for the collection of the same, the courts will take into account the customary

practice in the community in which the premises are situated.

The landlord has the right, notwithstanding, to demand his rent IN ADVANCE when he stipulates it shall be so paid at the time of the hiring, but not otherwise.

All of which shows that this matter, like all other provisions of the tenancy, should be the subject of mutual understanding at the time of the leasing or hiring.

## DEFAULT IN RENT.

**Lease May Be Forfeited For.**—Where the rent is not paid at the specified time the landlord may declare the lease forfeited if he so chooses. The method of procedure and the necessary form for notice will be found under the heading of "Forfeiture of Lease."

**Or Landlord May Bring Action For.**—If the landlord does not desire to have the lease declared forfeited he may, at his option, bring an action for the collection of the amount which is in default.

## RAISING THE RENT.

**When and How Landlord May Change**

**Terms of Lease.**—In all tenancies of lands or buildings FROM MONTH TO MONTH the landlord may, upon giving notice in writing at least THIRTY DAYS before the expiration of the month, raise the rent or otherwise change the terms or conditions of the lease, to take effect at the expiration of the month. The notice must be given at least full thirty days before the month is up, and the time should be very carefully computed; otherwise it will be of no avail.

If the tenant continues to occupy the premises after receiving such notice he is considered to have accepted its terms and becomes bound by them; it is in fact a new contract between the lessor and the lessee.

The terms of a lease from month to month may, of course, be changed by the mutual consent of the parties without such notice.

Several suits which have been brought in court would seem to indicate that some people have an idea that the terms of any lease may be changed by giving the thirty days' notice, as aforesaid. Such, however, is not the case. This provision of the law applies only to

temporary tenancies from month to month, where there is no agreement as to the terms for more than one month at a time; therefore changing the terms of a lease for a specified term is not thereby authorized.

Neither could the rent be raised by giving such notice where there is an agreement that the tenant could have the premises at a certain price as long as he remained in possession.

Form for Notice of Raising the Rent. —Any form of language will do, but the following is explicit and definite for the purpose:

NOTICE OF RAISING THE RENT.

**To (name of tenant):**

**You are hereby notified that at the expiration of the month of your tenancy which occurs on the (thirty-first day of July, 1950), the terms of the agreement under which you occupy the premises situate (here describe the premises sufficiently to identify the ones meant in the notice; if in a city, the street and number, or the name of the building, will do), under tenancy from month to month, will be changed as follows: The monthly rent thereof will be (forty) dollars per month, payable (monthly in advance), on the (first) day of each and every month you continue to hold possession of the said premises after the expiration of the month of your tenancy aforesaid, instead of the sum of (thirty) dollars per month heretofore paid by you.**

**(Signature.....)**

**(Date.....)**

## LETTING PARTS OF ROOMS.

**Is Penalized By Statute.**—One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to possession of the whole room for the term agreed upon, and if the landlord violates this regulation, he is penalized to the extent that every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

## RENEWAL OF HIRING.

**Of Tenancy from Month to Month, or from Year to Year.**—The word "hiring" as here used is intended to designate the letting of premises for TEMPORARY or UNSPECIFIED periods, as from week to week, month to month, or year to year; where there is no agreement or lease for a fixed or definite time. Where no time lease is given practically all rental property is nowadays let upon the month to month or year to year

plan. Such tenancies are continuing ones. That is, if the tenant rents premises by the week, or month, or year, he is presumed by law to have taken them INDEFINITELY; in other words, he impliedly obligates himself to remain in possession thereof until such time as either of the parties gives notice to the other of his intention to terminate the hiring.

Therefore the tenant cannot lawfully vacate until he has given the landlord notice of his intention to do so, and the landlord cannot put the tenant out until he has given him notice to quit. And until such notice of his intention to quit has been given by the tenant he is liable for the rent, even if he has vacated the premises.

## RENEWAL OF LEASE.

**Has Reference to Hiring for Specified Period Only.**—This heading refers only to the renewal of leases where the hiring is for a SPECIFIED OR DEFINITE TERM. The legal name for such a lease is an "estate for years," commonly spoken of as a lease for years. And although the expression would seem to imply a term running into a number

of years, such is not the case. A lease for one year, or one month, or one week, or even one day, is as much a lease for years, or an estate for years, as a lease for ten years would be. What is really meant by the expression, then, is a hiring for a fixed time, no matter how long or how short, as distinguished from a hiring for an indefinite or unfixed time; in the former case the hiring expiring at the end of the term thereof without notice, while in the latter case the hiring can be terminated only by giving notice. Thus, a hiring FOR A MONTH is for a fixed and definite time, for one month only, and terminates at the end thereof, without notice from the landlord to quit, or from the tenant of his intention to quit; but a hiring FROM MONTH TO MONTH is for an indefinite time, continuously, until interrupted or discontinued by notice by either landlord or tenant.

There are two methods by which leases for years are renewed, as follows:

1. **By Express Covenant in the Lease.**—The terms of a lease for a specified term may provide for its renewal at the end of the term at the option of the lessee. The original lease need not defi-

nitely fix all the terms of the new lease, so long as it furnishes definite methods of arriving at the intention of the parties when the time comes to renew, as by valuation, arbitration, or appraisal. It should, however, be precise as to the term, and as much so as to the other provisions as circumstances will admit.

The lessee must give the lessor notice that he desires to exercise his option to renew the lease BEFORE THE ORIGINAL TERM EXPIRES, or he will forfeit all his rights under the option; and unless the lessee does exercise his right by giving notice of his desire to renew, he cannot be held for an additional term. Thus the option is not binding on either party until it is exercised.

The lease may, of course, provide HOW and WHEN the notice of the tenant's desire to renew shall be given, and he will be required to conform to its terms in that respect

2. **By Holding Over of Tenant.**—Where the tenant in possession of premises on a lease or hiring for a specified time holds over or continues in possession after the expiration of his term without any new agreement as to how long he shall remain, and the lessor accepts

rent from him, he will be presumed to be staying on UNDER THE SAME TERMS AND CONDITIONS AS BEFORE, the payment and acceptance of the rent evidencing the implied agreement between the parties to that effect; therefore the law presumes the hiring to be renewed, subject to and according to all the provisions of the lease which has expired, except as to the length of the term. That is, the term for which the lease is presumed to be renewed is limited to ONE MONTH ONLY when the rent is payable monthly; to ONE YEAR when the rent is payable quarterly, half-yearly, or yearly. But in no case is the lease presumed to be renewed for more than one year at a time.

In other words, when the lessee holds over, with the permission, either express or implied, of the lessor, after his term has expired, he becomes a tenant either from month to month or from year to year, according to the manner of paying the rent. The tenancy thus becomes subject to termination at the will of either party at the expiration of each recurring monthly or yearly period by giving thirty days' notice as explained in

detail under the heading of "Termination of Hiring."

**Landlord Must Either Accept Holdover as Tenant or Put Him Out.**—It therefore necessarily follows that where the tenant holds over as aforesaid the landlord must either treat him as a tenant or as a trespasser; he must either tell him peremptorily to get out or else acknowledge him as a tenant under the same terms as before. And where the landlord accepts the rent (or by leaving the tenant in possession thereby implies that he will accept it when due), it is sufficient acknowledgment of his intent to renew the tenancy as presumed by law, and he is bound thereby.

The tenant holding over has, however, no such election as to his status; his mere continuance in possession for even a day over his term fixes him as a tenant for another month or year, as the case may be, if the landlord thinks proper to insist upon it. He should therefore vacate the premises by the end of the last day of his term if he does not wish to be held liable for another term.

**When Holdover Becomes Trespasser.**—But where the lessee for a specified term holds over AGAINST THE CON-

SENT of the lessor he is then simply a trespasser without any rights in the premises whatsoever. In such case he is not entitled to thirty days notice to vacate, but may be treated as a trespasser, subject to an action for ejectment, or for unlawful detainer, at the option of the lessor.

**Exception as to Renewal of Lease of Agricultural Lands.**—Where the lessee of agricultural lands has remained in possession thereof for more than SIXTY DAYS after the expiration of his term, without notice to quit or demand for possession being served upon him, he shall be deemed to be holding the premises by permission of the lessor, and shall be entitled to remain in possession for a FULL YEAR, under the terms of his lease.

Likewise, the tenant, by holding over for more than the sixty days aforesaid, shall be construed as thereby CONSENTING to take the property for another year, and is bound for that time.

**Best Way to Avoid Disagreements.**—The best way to avoid any disagreement or misunderstanding as to how long the lease is deemed to be renewed for when the tenant holds over his term is to in-

sert a clause like this in the lease, which is now generally done:

"If the said party of the second part shall hold over said term, with the consent, express or implied, of the said party of the first part, such holding shall be construed to be a tenancy only from month to month."

With such a clause in the lease there can be no argument, and the tenancy can be terminated as before stated, at any time at the will of either party by giving the required thirty days notice.

## TERMINATION OF LEASE

**Four Causes Specified.**—The code specifies four causes which have the effect of terminating the hiring arbitrarily without recourse to legal process, namely:

1. **By Ending of Term.**—A lease expires automatically at the end of its term, where the term is fixed and certain, and agreed upon.

2. **By Mutual Consent and Surrender.**—A hiring which is either from month to month or for a fixed period may be cancelled at any time by mutual consent of the parties and surrender of the premises to the lessor.

3. **When Lessee Acquires Paramount**

Title.—A lease is extinguished when the lessee acquires a title which is superior to that of the lessor, as by purchase of the leased premises; since, being then the owner, it would not avail him anything to pay rent to himself.

4. By Destruction of Premises.—The complete destruction of the premises accidentally by the elements or by the act of God cancels completely the lease, and the relations of landlord and tenant which existed between the parties are at an end, in the absence of any agreement to the contrary.

Where buildings upon leased premises are destroyed by fire neither the landlord nor the tenant are under any obligations to restore them; and if the landlord should restore them the tenant has no claim to occupy them because of his previous lease.

These facts plainly show the necessity of incorporating the desires and intentions of the parties in the contract.

## HOW LEASE MAY BE TERMINATED

Optional With the Parties.—The sections under the preceding heading show how a lease is terminated by law with-

out the will or acquiescence of the parties. Under this heading is shown the circumstances under which the lease is not necessarily terminated but MAY BE TERMINATED at the will or option of either the lessor or the lessee.

1. **Upon Violation of Obligations by Lessor.**—The hiring may be terminated when the lessor does not, within a reasonable time after request, FULFILL HIS OBLIGATION to secure the tenant in his quiet possession and enjoyment of the premises, or put them in good condition, or repair them, when the obligation rests upon him to do so.

2. **Upon Partial Destruction of the Premises.**—The hirer of a thing may terminate the hiring before the end of the term agreed upon when the GREATER PART of the thing hired, or that part which was, and which the latter had, at the time of the hiring, reason to believe was, the MATERIAL INDUCEMENT to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

3. **Upon Death of Either Party.**—A lease for an UNSPECIFIED term is NOT terminated by the death of either party, but it CAN BE BY GIVING

NOTICE to the survivor of the death of the other. Such notice must state the desire of the representatives of the deceased that the lease be terminated.

But a lease for a SPECIFIED term is NOT TERMINATED BY THE DEATH OF EITHER PARTY; the contract passes on to the executors or administrators of the deceased as an asset of his personal estate.

**4.—Upon Incapacity to Contract.**—A lease for an unspecified term can also be terminated upon the incapacity to contract of either party, by reason of insanity or other cause, upon giving notice to the other party of the desire to terminate.

**5.—Upon Default in the Rent.**—The landlord has the right to declare the lease forfeited whenever the rent is not paid according to the terms of the contract, or as the law provides it shall be paid in the absence of any agreement.

**6. Upon Violation of Covenant of Use by Lessee.**—Where premises are let to be used for a PARTICULAR PURPOSE the hirer must not use them for any OTHER purpose; if he does, he does so at his peril. He is liable to the lessor for all damages resulting from such un-

lawful use, or the lessor may treat the lease as thereby rescinded. And if in consequence of unlawful use the premises are destroyed by fire, the tenant could very probably be held for damages for such destruction.

**Liability for Rent Where Lease is Terminated.**—Where a lease is terminated before its expiration, or by eviction, the lessee must pay the due proportion of the rental for such use as he has had of the premises.

## TERMINATING HIRING

**Landlord's Notice to Quit.**—If the hiring is by the week the landlord must give the tenant a week's notice to quit; if by the month or by the year, thirty days notice. The notice must in all cases be IN WRITING.

There is much misunderstanding as to how the time of the required notice is to be computed, and an endeavor will be made to make it plain.

The tenant cannot be put out in the middle of his term, therefore the notice must be served the full number of days required prior to the expiration of his term.

To illustrate: The tenant rents a

house or a store by the month, his rent beginning on the first day. The landlord desires to regain possession, say on the first of August. He must therefore give the tenant full thirty days previous notice to quit not later than the 31st of July. In figuring the number of days the first day (the day on which the notice is served) is excluded and the last day is included, unless it be a Sunday or a holiday, in which case the next business day is included. Therefore the notice to quit could be served not later than the first of July in order to give the required thirty days notice so as to become effective on the 31st. It must be understood that the number of days begins to run from the time of the actual service of the notice, and not from the date thereof.

Now, suppose the landlord neglected to serve the notice until the second of July. The result would be that the tenant would be given only twenty-nine days notice, and the order to vacate would therefore not become effective on the 31st of July, as intended, because it lacked one day of the full thirty days required by statute; the effect being that the tenant could not be ejected until a

new notice of thirty days had been served upon him.

This illustration shows the necessity of accurate computation of the number of days required to be given before the notice takes effect, paying due regard to the short months, leap year, Sundays and holidays. A few extra days notice won't hurt, and may often save much annoyance.

**Form for Landlord's Notice to Quit.**—The notice to quit need not be in any particular language, but the following form is legally accurate, where the tenancy is from month to month, and is recommended for the purpose. If the tenancy is by the week instead of monthly change the wording accordingly so as to make it a week's notice.

LANDLORD'S NOTICE TO QUIT.

**To (name of tenant):**

**You are hereby required to quit and deliver up to me the possession of the premises now held and occupied by you, situated in (here insert name of state, county, city or town, street and number, or other description sufficient to identify positively the premises meant), at the expiration of the month of your monthly tenancy of said premises which commences on the (first day of July, 1950), and ending on the (thirty-first day of July, 1950). This is intended as thirty days notice to quit, for the purpose of terminating your tenancy as aforesaid.**

**(Date.....) (Signature.....)**

If the tenancy is from year to year

change the wording of the form to read like this:

**"You are hereby required to quit and deliver up to me the possession of the premises now held and occupied by you, situated in (here insert the description of the property), at the expiration of your yearly tenancy of said premises which commences on the (first day of July, 1950), and ending on the (thirty-first day of July, 1951). This is intended as thirty days notice to quit for the purpose of terminating your tenancy as aforesaid."**

Tenant's Notice of Intention to Quit.—The tenant's notice of his intention to vacate must be computed and served in just the same manner as the landlord's notice to quit, as illustrated above. If the full week's or thirty days notice as the case may be is not given before the expiration of his week, or month, or year he is liable to be held for an extra term's rent, whether he vacates or not.

Form for Tenant's Notice of Intention to Quit.—The form which follows is for use where the tenant hires from month to month. If the tenancy is by the week, or year, change the wording to read accordingly.

TENANT'S NOTICE OF INTENTION TO QUIT.

**To (name of landlord):**

**Please take notice that I shall quit possession and deliver up the premises now held and occupied by me, situated at (here describe the location sufficiently to identify the premises meant), at the end of the monthly period of my tenancy which terminates on the (thirtieth**

**day of September, 1930), as I intend to remove therefrom. This notice is given as required by law for the purpose of terminating the said tenancy.**

**(Date.....) (Signature.....)**

**Where Hiring is From Year to Year.**—Where the hiring is from year to year, but for no specified number of years, or where the law presumes the hiring to be from year to year, 30 days notice to quit, or of intention to quit, is all that is required, but such notice must be served at least full thirty days before the expiration of the year.

**Landlord Entitled to Re-enter After Thirty Days.**—At the expiration of the thirty days notice, legally given as above, the landlord is entitled to re-enter the premises and take possession again. If he meets with opposition and resistance he can proceed according to law to recover the property and enforce his claim for any damages he may incur by reason of such opposition and resistance.

**The Thirty Days Notice is Imperative Under All Circumstances.**—Where the tenancy is of the temporary character as above described, the thirty days notice to quit cannot be dispensed with under any circumstances, no matter what the land-

lord's reason may be for putting the tenant out, whether for default in the rent, or violation of any other of the provisions of the agreement, or for any cause whatsoever.

**Waiving of Notice.**—Either notice to quit or notice of intent to quit may be waived by the parties to the hiring; or the length of the notice required by law may be shortened or extended by their mutual agreement.

**Holding Over by Tenant From Month to Month or Year to Year.**—After the expiration of the thirty days notice as prescribed by law, the tenant, if he holds over and refuses to give up the premises peacefully, is guilty of unlawful detainer. The landlord may then and without further notice bring an action of ejectment against him, or he may instead bring an action for unlawful detainer and recovery of possession, which is the usual method. But before he can bring the latter action he must serve the tenant with a FURTHER NOTICE TO GIVE UP POSSESSION OF THE PREMISES AT THE EXPIRATION OF THREE DAYS, in writing. If the tenant then still refuses to vacate the landlord may proceed at once with his action for re-

covery both of the premises and all penalties and damages allowed him by law.

**Same as to Tenant and Subtenant.**—All the above provisions apply with equal force to tenant and subtenant. The tenant may evict the subtenant in the same manner, and the subtenant may be required to give like notice to the original tenant from whom he hires.

## PENALTIES AND DAMAGES

**Penalty for Holding Over.**—If any tenant, or any person in collusion with the tenant, continues in possession of any lands or tenements after proper notice has been served upon him to quit, or demand made to perform any covenants of the lease which he may have violated, or else give up possession, he must pay to the landlord treble rent during the time he thus unlawfully holds over.

**Penalty for Failure to Quit.**—If any tenant gives notice of his intention to quit the premises, and does not quit and deliver up possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession thereafter.

**Liability of Lessor for Breach of Lease.**—Violation of the terms of the

lease by the lessor entitles the lessee to bring an action against him to recover whatever damages he may sustain by reason of such breach.

**Liability of Tenant for Breach of Lease.**—Violation of the terms of the lease by the lessee entitles the lessor to bring an action against him for whatever damages he may sustain by reason of such breach.

## DEMAND FOR POSSESSION

**No Notice Necessary Where Tenancy is For Specified Term.**—Expiration of the time stated in a lease for a specified term terminates the lease automatically without notice. The lessee is supposed to know when his term is up, and therefore NO NOTICE TO QUIT IS NECESSARY. Neither is any notice of the tenant's intention to quit necessary. The tenancy is ended without further ado, and that is all there is to it. It is the tenant's duty to give up possession at once, on the last day, unless he has made arrangements for renewal. If he holds over for even one day he takes a chance of being held for the rent for another term, or of being ejected and held liable for damages.

It is well, however, where the landlord does not intend to renew the lease after its expiration, to give the tenant notice to that effect. Such notice not only serves to make known the lessor's intentions, but also makes the tenant liable for treble rents from the moment the term ends, if he holds over, without giving him further notice.

A further notice of three days, commanding the tenant to vacate, is necessary, though, before the lessor can bring an action for unlawful detainer.

**Form for Notice Demanding Possession at End of Term.**—The form which follows is useful for notifying the lessee that the landlord requires possession of the leased premises at the end of the term, where there is no contract of renewal. It may be served upon the lessee at any time, unless a certain number of days notice is specified in the lease:

DEMAND FOR SURRENDER OF POSSESSION AT END OF TERM.

**To (name of tenant):**

**You are hereby notified that on the (thirty-first day of July, 1951), your lease or tenancy of the premises you now hold possession of, situate (here describe property and location definitely) will terminate and end, and you are requested and required to deliver possession thereof to the undersigned (or to some other person named) on said thirty-first day of July, 1951.**

**(Date.....) (Signature.....)**

## SURRENDER OF LEASE

**By Mutual Consent.**—The hiring of property may be terminated at any time upon such terms and conditions as may be agreed upon by the mutual consent of the parties, made in good faith, followed by the surrender and vacation of the premises. The latter is absolutely necessary in order to avoid charges of fraud.

When the surrender is made the fact should always be endorsed on the lease, or a separate contract drawn embracing the facts.

## FORFEITURE OF LEASE

**For Default in Rent.**—Where the tenant under a lease for a specified term is behind in his rent (default is the legal term), the landlord may serve him with THREE DAYS NOTICE TO PAY OR QUIT THE PREMISES. If the tenant does not then pay, or give up possession, the lease is thereby terminated, and the tenant is guilty of unlawful detainer. The landlord is then at liberty to commence an action for recovery of the premises whenever he shall see fit, and also for adequate damages. The notice may be served at any time within one year after the rent becomes due.

**Form for Notice to Pay Rent.**—The following form is a proper notice to the lessee when he is in default with the rent. Care should always be taken to state in the notice the amount of rent due, and also to demand possession if it is not paid. The law does not say the notice must state that the rent must be paid WITHIN three days, but that THREE DAYS NOTICE must be given the lessee to pay up or quit; which is quite a difference which probably but few understand.

NOTICE TO PAY RENT OR SURRENDER POSSESSION

**To (name of tenant):**
**You are hereby required to pay the rent of the premises situate (here describe the location and property definitely), and which you now hold possession of, amounting to (eighty-five) dollars, being the amount due and owing to me by you for (one) month's rent, from the (first day of July, 1950, to the thirty-first day of July, 1950), or deliver up the possession of the said premises to me (or to some agent named, who is hereby authorized to receive possession thereof, or of the rent due and unpaid by you). If you fail to comply with this notice I shall institute legal proceedings against you to recover possession of said premises, with treble rents.**
**(Date.....) (Signature.....)**

**For Violation of Covenants.**—Where the tenant violates or fails to perform any of the covenants or provisions of the lease the landlord may serve him with THREE DAYS NOTICE to perform or

comply with them or quit. If the tenant does not do so within a reasonable time, his failure to do so terminates the lease, and he is from that time on a trespasser guilty of unlawful detainer. The landlord may bring an action for the same without further notice, and may include his claim for whatever damages he may sustain.

**Form for Landlord's Notice to Perform Covenants.**—The following form can be varied to suit the case whenever it is necessary to give notice to the tenant to comply with the terms of any of the covenants of the lease which he may have violated. Probably the best way is to copy into the notice the exact words of the covenant which the lessor claims is violated as they are written in the lease.

NOTICE TO PERFORM COVENANTS, OR GIVE UP POSSESSION

**To (name of tenant):**

**You are hereby notified that in the lease under which you hold possession of the premises situate (describe the location definitely), you covenanted and agreed to (copy in here the exact words of the clause of the lease which the tenant has failed to perform), and which agreement you have failed to keep. Now this is to notify you that you are required to (state what the tenant is required to do), as you agreed to do as aforesaid, or deliver up posses-**

**sion of the said premises to the undersigned, or I shall begin legal proceedings against you to recover possession of the same.**

**(Date.....) (Signature.....)**

Notices Must Be Served Upon Subtenants Also.—The notices provided for above must be served not only upon the LESSEE but also upon any SUBTENANTS in actual possession of the premises.

Between Tenant and Subtenant.—The original tenant may take the same proceedings against a subtenant.

Any Person Interested May Save Lease From Forfeiture.—Within THREE DAYS after service of any of the notices mentioned above ANY PERSON who is interested in the continuance of the lease may pay the rent, or comply with the other demands made, and thus save the lease from forfeiture.

Forfeiture of Lease for Assigning, Subletting, or Committing Waste.—Any tenant or subtenant assigning, or subletting, or committing waste upon the premises, contrary to the provisions of his lease, thereby terminates the lease, and the landlord shall, upon service of THREE DAYS NOTICE TO QUIT upon the person or persons in possession

be entitled to restitution to him of such premises.

## UNLAWFUL DETAINER

**Definition.**—Unlawful detainer is the detaining or holding possession unlawfully of property belonging to another.

**When Tenant is Guilty of.**—The tenant of real property is guilty of unlawful detainer when he continues in possession thereof, either in person or by subtenant, after the expiration of his term without the permission of the landlord.

2. When he remains in possession after default in the rent and proper demand to pay the same.

3. When he remains in possession after violation of any of the covenants of the lease and proper demand to remedy the same.

**Actions for Unlawful Detainer.**—No action for unlawful detainer can be commenced until the guilty person has been served with THREE DAYS NOTICE of the intention to bring the action. This is explained further and forms for notices given under the heading of "Forfeiture of Lease."

## MANNER OF SERVING NOTICES

**Conformity With the Law Very Necessary.**—Where it is necessary to serve any notice upon any tenant or lessee great care should be used in making the service so as to conform strictly to the law, for if the service is faulty in any respect it may nullify the effect of the notice.

**What the Law Requires.**—The notice to quit, or any other of the notices required by the provisions of this article, may be served either by delivering a copy to the tenant personally; or, if he is absent from his usual place of residence or business, by leaving a copy of the notice at either place with some person of suitable age and discretion, and sending a copy through the mail, addressed to the tenant at his place of residence; or, if such place of residence and business cannot be ascertained, or a person of suitable age and discretion cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the

mail addressed to the tenant at the place where the property is situated.

**Service Upon Subtenant.**—Service upon a subtenant, either by the lessor or by the original lessee, may be made in the same manner.

**Caution.**—Always being careful to allow the full number of days to intervene between the time of the actual service and when the notice is to take effect.

## USE OF FORCE

**Not Permissible.**—The use of force in the ejectment or eviction of tenants after the right has accrued to the landlord to re-enter and take possession of the premises is not permissible in this state. It can only be done by due process of law, and by the proper officer of the court.

## JURISDICTION OF COURTS

**Of Justice Court.**—Actions for unlawful detainer may be brought in the Justice Court of the township where the property is situated where the whole amount of the damages claimed against the tenant does not exceed the sum of two hundred dollars, or the rental value of the premises does not exceed twenty-five dollars per month.

**Of Superior Court.**—Actions for unlawful detainer as specified in the above paragraph may be brought in the Justice Court, or they may be brought in the Superior Court of the county in which the property is situated, at the option of the plaintiff. All actions involving amounts greater than those specified can be brought in the Superior Court only.

## DUTY OF TENANT TO NOTIFY LANDLORD

**When Liable for Damages for Failure To.**—Every tenant who receives notice of any proceeding to recover the real property occupied by him, or its possession, must inform his landlord immediately, and must deliver to his landlord the notice he received, if in writing. And if the tenant fails to inform his landlord of any such notice, or to deliver the notice to him if in writing, he will be liable to the landlord for all damages which he may sustain by reason of such failure.

## CHANGE OF OWNERSHIP

**Lessee Not Affected By Transfer of Title.**—The transfer of the title to the leased premises does not in any way affect, change, or modify the lease. The

grantee simply takes the place of his grantor, and becomes the landlord of the tenant.

The new landlord therefore has all the rights of the original lessor against the tenant, and the tenant has the same rights against the new landlord as he had against the original lessor.

## PAYMENT OF TAXES

**Is Subject to Agreement.**—In the absence of any agreement to the contrary the law imposes the burden of paying the taxes and assessments upon the owner, but this, like most other matters, may be the subject of contract between the owner and the tenant, the latter assuming the liability if he chooses so to do.

## REMOVAL OF FIXTURES

**Right of Tenant to Remove.**—A tenant may remove from the leased premises, at any time DURING THE CONTINUANCE of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

**What Are Fixtures.**—What things constitute fixtures, and when they are removable and when irremovable, are explained in detail in the chapter on real property, herein, to which the reader is referred.

**Must Be Removed Before End of Term.**—The tenant must remove his fixtures from the leased premises BEFORE THE END OF THE LAST DAY of his term, or he forfeits his right to do so. If he leaves them as much as one day without permission they become the property of the landlord. If, however, the lease says they may be removed at the end of the term, it will be implied that the tenant has a reasonable time thereafter in which to remove them; but he must use diligence, and not sleep on his rights, if he would avoid possible difficulties.

**Tenant Cannot Remove Fixtures Where Lease is Forfeited.**—It seems to be a well-settled rule, as evidenced by decisions of the courts, that where the lease is forfeited for nonpayment of rent or for violation of its covenants, the tenant cannot then remove his fixtures. They pass into the possession of the lessor.

## REPAIRS

**Lessor Must Put Dwelling in Inhabitable Condition.**—The lessor of a building intended for the OCCUPATION OF HUMAN BEINGS must, in the absence of any agreement to the contrary, put it into condition fit for such occupation, and repair all subsequent dilapidations thereof which render it untenantable, except all such deteriorations and damages as are caused by the negligence and want of care of the tenant; in the latter circumstances, the lessee must make the repairs himself.

**Lessee May Make Repairs if Owner Fails to Do So, or May Vacate Premises.**—If, within a reasonable time after the lessor has been notified of the necessity for repairs which it is his duty to make, he neglects to make them, the lessee may make them himself, up to the amount of ONE MONTH'S RENT, and deduct the same from the rent; or, he may vacate the premises and surrender the lease, in which case he is discharged from further payment of rent, or performance of other conditions of the contract.

In several cases the courts have de-

cided that under no circumstances can the tenant make any repairs himself until after he has notified the landlord to do so, if he wishes to hold the latter to pay for them; neither can he vacate the premises because of their condition until he has notified the landlord to improve them and he fails to do so.

**Tenant May Contract to Make the Repairs.**—The above paragraphs shall in no wise be construed to mean that the lease of a dwelling house may not provide that the tenant shall make all necessary repairs himself; such a clause in the contract is lawful, the preceding rules, as stated in the beginning, defining the duties of the lessor and the rights of the tenant only in cases where there is no agreement to the contrary. A great many dwelling house leases do provide that all repairs and upkeep shall be made by the tenant, and that he shall return the premises in as good condition as he found them, ordinary wear and tear and damages by the elements excepted.

Where the tenant undertakes to make the repairs it is very important that the clause excepting "damages by the elements" be added to the contract; otherwise he might be held to make repairs

necessitated by accidental casualties not contemplated when making the contract.

**Lessor Not Liable for Damages From Dilapidations.**—Many suits have been brought against landlords for damages sustained by tenants because of the dilapidated condition of leased residence premises consequent upon the landlord's failure to make repairs after notice had been given him to do so. In all such suits the courts have invariably held that no damages could be recovered, for the reason that the law gives the tenant the privilege of making the repairs himself if the landlord fails to, or in such case the option to vacate the premises; and if he neglects to take advantage of these remedies it is his own negligence, and he has no one to blame but himself.

But if the landlord does assume to make repairs, and if in the performance thereof, or as a result thereof, any injury is caused to the lessee because of want of skill or proper selection of his workmen or materials he can be held liable therefor.

**Lessor's Obligation to Repair Not Applicable to Business Property.**—It will be noticed that the obligations as to repairs as stated above have reference sol-

ely to premises occupied or to be occupied by humans as a dwelling place. The courts have held that they are special provisions attached by statute to residence property for the purpose of safeguarding the health and well-being of the occupants, and that said provisions do not in any way apply to property used for business purposes.

Where property is to be used for business purposes the prospective lessee is supposed to examine them and decide for himself if they are fit for his purpose, as he is presumed to know best his own intentions and needs; and as the premises might originally have been erected for an entirely different use, there can be no implied presumption that they are suitable for the use to which he intends to put them, or that they will be kept in repair so as to continue to be suitable for such use. Therefore the tenant is presumed to take the premises as they are, and the landlord, in the absence of any express agreement on his part, is not required to make any alterations or repairs, even when the premises become defective from decay.

In the case of a dwelling house it is different. As it was presumably erected

for human occupation, and is let for that purpose, it is presumed that it is fit for that purpose, and the obligation is therefore imposed by the law of the state upon the landlord to place it in and maintain it in an inhabitable condition, unless the tenant assumes the obligation to do so himself.

It is thus quite evident that, since the landlord is not required by statute to make repairs upon premises used for business purposes, the tenant must either do so for himself, or provide for such matters in the lease. Therefore all conditions and agreements regarding alterations, repairs and maintenance, light, heat, sign space, water rates, painting, and all other items, as well as purposes for which the premises are to be used, should be carefully and specifically incorporated in the lease, as the law itself will afford no comfort or relief, but will leave it to the agreements in the contract.

## NUISANCE

**Definition of Nuisance.**—Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of the property

so as to interfere with the comfortable enjoyment thereof, is a nuisance.

**Action Against Tenant for Maintaining.**—An action may be brought against the tenant by any person whose property is injuriously affected by a nuisance, and if judgment is obtained the nuisance may be enjoined or abated, and damages therefor may be recovered as well.

## WASTE

**Duty of Tenant to Use Property in Careful Manner.**—While the tenant is not liable for damages to the leased premises for use in a lawful and proper manner, yet it is his duty to so use them as not to cause unnecessary injury.

The tenant is generally liable for causing permanent injury over and above ordinary wear and tear, when such injury is caused by his wrongful act or negligence. The measure of care which the tenant must use to avoid responsibility is that which a person of ordinary prudence and caution would use if the property were his own.

**Damages for Committing Waste.**—Where the tenant commits wilful waste any person who is aggrieved thereby may bring an action against him there-

for, and the judgment may be for treble the amount of the injury.

**Lease May Be Terminated for Waste.**—Any tenant or subtenant committing waste (injury) upon the leased premises, contrary to the provisions of his lease, thereby terminates the lease, and the landlord shall, upon service of proper notice to quit upon the person or persons in possession, be entitled to restitution to him of such premises. See "Forfeiture of Lease."

## FORMS FOR LEASES

**All Leases Should Be Reduced to Writing, and Should Be Explicit in Their Terms.**—A lease is but a contract, and therefore should be drawn and executed in about the same manner as any valid contract would be. There must be parties who are competent to contract, and the wording should be direct and explicit enough so as to be able to ascertain from it the intentions of the parties towards each other, and just what each obligated himself to do. The law simply establishes the liabilities of the parties in the absence of definite agreements, and practically all its provisions may be modified or changed by contract.

Therefore every matter of importance, in cases where it is not desired to be bound by the provisions of the law which would govern in the absence of any special agreement, should be incorporated in the written instrument. Oral leases and agreements may be all right, but when proof is wanted they are sometimes pretty poor things; so, even in short term contracts, prudence and good business economy would seem to suggest that all leases should be reduced to writing in order to avoid argument and dispute, and to more firmly establish both the rights and liabilities of the parties interested.

**Form for Ordinary, Every-Day Lease.**—No particular language is required to be used in drawing up a lease, but certain forms and expressions have come to be used for the purpose, and it is well to follow them pretty closely for the sake of legal accuracy. The following form is simple, is in every way adequate, binding and holding. After the opening paragraphs are copied, with the wording in parentheses changed to suit the case in hand, there may be added, in the place indicated, as few or as many other agreements as the parties see fit. After

as many have been inserted as desired, then close the form as per the closing paragraphs; being always careful to state when the term begins, and dating it on the day it is signed and delivered, you have as perfect an instrument as it is possible to make. Each party should take a copy.

LEASE.

**THIS LEASE, made the (first day of July, in the year of our Lord nineteen hundred and twenty), between (Jonathan Wilson), the party of the first part, and (Harrison Fish), the party of the second part, Witnesseth: That for and in consideration of the payments of the rents, and the performance of the covenants contained herein, on the part of the said party of the second part, and in the manner hereinafter stated, said party of the first part does hereby lease, demise, and let unto the said party of the second part, that certain (dwelling house, store room, warehouse, or whatever) and its appurtenances, situated at (here describe the property intended to be let definitely, stating the city or town, county and state also), for the term of (two years), commencing on the (first day of July, 1920), and ending on the (thirtieth day of June, 1922), at the monthly rent of (forty) dollars, payable monthly in advance, on the first day of each and every month during said term.**

**And the said party of the second part does hereby covenant, promise and agree to pay to the said party of the first part the said rent herein reserved in the manner herein specified.**

**And it is further covenanted and agreed, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and to remove all persons therefrom.**

**(Add here any other covenants or agreements desired, as per the suggestions given further on, closing the lease with the paragraphs which follow).**

**And it is further covenanted and agreed, that at the expiration of the said term, or any sooner determination of this lease, the said party of the second part will quit and surrender the premises hereby leased and demised in as good order and condition as reasonable use and wear thereof will permit, damages by the elements excepted.**

**And it is further covenanted and agreed, that if the party of the second part shall hold over the said term, with the consent, expressed or implied, of the party of the first part, such holding shall be construed to be a tenancy only from month to month, and said party of the second part will pay the rent as herein covenanted for such term as he may hold the same.**

**And it is further covenanted and agreed that all the provisions of this lease shall extend to and include the heirs and assigns of the lessor, the party of the first part, and the executors, administrators, and assigns of the lessee, the party of the second part.**

**In witness whereof, the said parties have hereunto set their hands the day and year first above written.**

**(Signature of lessor.....)**
**(Signature of lessee.....)**

**Signed and delivered in the presence of:**
**(Signatures of witnesses.)**

Forms for Extra Covenants.—The following covenants are suggestions for wording other items of the contract. They cover nearly all the items usually inserted in the average lease. A covenant is simply an agreement to do or not to do a certain thing.

The examples given can be changed or varied so as to indicate the intentions of the parties, and others added when desired to cover matters like insurance,

payment of water rates, light, and heat, removal of fixtures and improvements, amount of repairs and when and how to be made, repairing and rebuilding in case of fire, how lease may be surrendered, allowance of days of grace in the payment of the rent, and any and all items which the circumstances and conditions surrounding the making of the lease may suggest.

COVENANT OF USE

**And it is further covenanted and agreed by the party of the second part that he will use the said demised and leased premises for the purpose of conducting a grocery store (or whatever the use may be), and for no other purpose, and that he will so conduct said business in said premises so that it shall not become a nuisance or interfere with other tenants in said premises.**

COVENANT NOT TO SUBLET

**And it is further covenanted and agreed that the said party of the second part shall not underlease or sublet the whole or any part of the demised premises, or in any other manner part with the possession or occupation of the same, without the special license and consent of the party of the first part, in writing, first had and obtained.**

COVENANT NOT TO ASSIGN

**And it is further covenanted and agreed that the said party of the second part shall not assign this lease during any part of the demised term, without the special license and consent of the party of the first part, in writing, first had and obtained.**

COVENANT PERMITTING ASSIGNMENT IF SUITABLE TENANT IS FOUND

**And it is further covenanted and agreed that the said party of the second part may assign**

**this lease, during any part of the demised term, if a tenant be found who is acceptable to the party of the first part.**

COVENANT AS TO ALTERATIONS

**And it is further covenanted and agreed that the said party of the second part shall not make, or permit any other person to make, any alterations of the demised premises without the special license and consent of the party of the first part, in writing, first had and obtained.**

COVENANT BY LANDLORD TO MAKE REPAIRS

**And it is further covenanted and agreed that the party of the first part shall, at his own expense, from time to time, and at all times during said term, well and sufficiently repair said premises, with the appurtenances, as often as reasonable need or occasion shall require.**

COVENANT BY TENANT TO MAKE REPAIRS

**And it is further covenanted and agreed that the party of the second part shall, at his own expense, from time to time, and at all times during said term, well and sufficiently repair, sustain, maintain, cleanse, glaze, empty, and keep said premises, with the appurtenances, as often as reasonable need or occasion shall require, ordinary wear and tear and casualties by the elements which may accidentally destroy, consume, burn down or burn up the said premises, or any part thereof, only excepted.**

COVENANT BY LANDLORD TO PAY TAXES

**And it is further covenanted and agreed that the party of the first part shall pay and discharge all taxes and assessments which may be levied during said term upon said premises.**

COVENANT BY TENANT TO PAY TAXES

**And it is further covenanted and agreed that the party of the second part shall, as additional rent and consideration, pay and discharge all taxes which may be levied during said term upon said premises.**

COVENANT TO RENEW LEASE

**And it is further covenanted and agreed that the said party of the first part, the lessor**

**herein, if so requested by the said party of the second part, the lessee herein, at least (thirty days) before the expiration of the term herein in this lease specified, shall and will grant a further lease of the aforesaid premises to the said party of the second part, the lessee herein, for the further term of (five) years, to commence from the expiration of the term hereby granted, at and under the (same, or as the case may be) yearly rent and covenants and agreements as herein contained.**

COVENANT OF OPTION TO PURCHASE

**And it is further covenanted and agreed that if the said party of the second part, or his assigns, at any time during the said term, shall desire to purchase the herein leased premises for the sum of (so many dollars), in gold coin of the United States, and shall tender said amount to the said party of the first part, together with all rent due up to the time of said tender, then this lease is by said tender terminated, and the said party of the first part will on the same day make, acknowledge, and deliver to said party of the second part, or his grantee, a grant of said premises.**

By following the above plan of making a paragraph of each separate item of the agreement, and starting each paragraph with the same words, to wit: "And it is further covenanted and agreed," and then numbering the paragraphs in rotation, greater uniformity and simplicity is preserved, there is not so much opportunity for the language to become complicated, and the intentions of the parties can be more readily and easily arrived at.

In Case of Complicated Leases.—A simple, ordinary, every-day lease can be

drawn up by almost anybody, but where the term is a long one, and many restrictions as to use and reversion, building operations, or other important matters involving legal technicalities are to be provided for and incorporated therein, the parties should without doubt exercise the part of prudence and secure the services of a competent attorney well versed in the law of real property.

**Form for Farm Lease.**—The following form for the lease of agricultural lands is in general use in California, and will meet all requirements by following the general form of the wording, simply making whatever changes may be necessary according to the terms of the lease.

The words, "to farm let," seem to be considered requisite in all leases of farm lands.

In the absence of any clause in the contract to the contrary, a tenant for years or at will, while legitimately in possession, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy. If he does so while wrongfully holding over he is liable for damages.

## FARM LEASE

**THIS LEASE, made this (first day of January, 1920), between (James Spencer), of the county of (El Dorado), state of California, party of the first part, and (Henry Hodges), of the county of (Sonoma), state of California, party of the second part, witnesseth:**

**That the said party of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, on the part and in behalf of the said party of the second part to be paid, kept and performed, does hereby grant, demise, and to farm let unto the said party of the second part all those certain premises described as follows, to-wit: .(here describe the premises intended to be leased as definitely as possible), for the term of (four) years, commencing on the (first day of March, 1920), and ending on the (29th day of February, 1924), for and at the yearly rent of (so many dollars), payable (at such times as may be agreed), in gold coin of the United States.**

**And the said party of the second part does hereby covenant and agree to pay to the said party of the first part the said rent herein reserved in the manner herein specified.**

**To have and to hold the said demised premises unto the said party of the second part, for his sole and proper use and benefit, for and during the term aforesaid, together with all the tenements and hereditaments thereunto appertaining, and all the stock and farming utensils of every name and nature now being in or upon the same, belonging to the said party of the first part.**

**In consideration whereof the said party of the second part hereby covenants and agrees to and with the said party of the first part that he will occupy, till, and in all respects cultivate the premises above described, during the term aforesaid, in a farmer-like manner, and according to the usual course of farming practiced in the neighborhood; that he will not commit any waste or damage, or suffer any to be done; that he will, at his own cost and expense, keep the fences and buildings on said premises in good repair, reasonable wear thereof and damages by the elements excepted.**

**(Add here any other special covenants which may be agreed upon, then closing the lease as follows):**

**And it is further covenanted and agreed that all the provisions of this lease shall extend to and include the heirs and assigns of the lessor, the party of the first part, and the executors, administrators, and assigns of the lessee, the party of the second part.**

**In witness whereof, the said parties have hereunto set their hands the day and year first above written.**

**(Signatures of parties.....)**

**Signed and delivered in the presence of:**
**(Signatures of witnesses).**

If the land is to be farmed on shares, add the following paragraphs after the one beginning, "In consideration whereof, etc.," leaving out the portions of the first and second paragraphs about the rent.

**And that he will deliver to said first party, or to his order, each year during the term of this lease, one equal (third) of all the proceeds and crops produced on the said farm and premises aforesaid, of every kind, name, and description, to be divided on the said premises, in stack and sack, according to the usual course and custom of making such divisions in the neighborhood, and in a seasonable time after such crop shall have been gathered and harvested.**

**And it is further covenanted and agreed that the said party of the second part shall find all seed or seeds necessary to be sown on said premises, and shall do or cause to be done all necessary work and labor in and about the cultivation of said premises; that he is to have full permission to inclose, pasture, or till and cultivate the said premises, so far as the same may be done without injury to the reversion, and to cut all necessary timber for firewood, farming purposes, and repairing fences.**

**Said party of the first part shall furnish on said premises, at the proper time in each year during the term of this lease, sacks sufficient**

**to hold all the grain coming to him as his share.**

**Lease By Corporation.**—The property of a corporation can be leased only by authority of its board of directors. It is well to state in the instrument that the lessor therein is a corporation, and that the lease is made pursuant to a resolution of its directors duly passed. See remarks and phraseology under the heading of "Form of contract of sale by corporation," in chapter three.

## RECORDING LEASE

**Lease Not Exceeding One Year.**—A lease NOT EXCEEDING ONE YEAR NEED NOT BE RECORDED, even if the lease is in writing. If the lease is otherwise all right it is valid against everybody, whether recorded or not. Such leases oftentimes are recorded, but only because of a misapprehension of the effect thereof. Nothing can be added to its validity or effectiveness by recording any document which the law does not require to be recorded.

**Lease for More Than One Year.**—A lease for a period LONGER THAN ONE YEAR MUST BE RECORDED to be valid against others than the les-

sor and lessee. It is just as valid and effective between them if not recorded, but is void against any subsequent purchaser or mortgagee of the leased property, in good faith, and for a valuable consideration, whose conveyance or mortgage is FIRST duly recorded.

To illustrate: Jones leases his warehouse to Brown for ten years. The lease is not recorded. In the meantime Jones sells the property to Thompson. If Thompson records his deed before the lease is recorded Brown's lease is thus rendered void, and Thompson can throw him out if he chooses. Thompson's purchase of the property must, however, be in good faith. If he had knowledge of Brown's lease the case would be different. Such knowledge would have the same effect that recording the lease would; therefore the lease would be good against Thompson, and he could not remove Brown because of the fact that his lease was not recorded. Actual knowledge of a thing is just as effective as notice of the existence of the thing as any information which can be gotten from the books of record, and has practically the same force and effect.

A lease for more than one year is also

void as against any judgment affecting the title of the property unless it shall have been duly recorded prior to the beginning of the action in which such judgment is rendered.

**Must Be Acknowledged Before Recording.**—Before a lease can be recorded it must be acknowledged before a notary public or other competent person authorized to take acknowledgments. It can then be recorded by either party, at any time during its term. Forms for the acknowledgment of leases are the same as required for the acknowledgment of deeds, and can be found in the chapter on the "Transfer of Real Property."

## ASSIGNMENT OF LEASE

**Definition of Assignment.**—If the lessee parts with or conveys ALL his right and interest in the lease, for the WHOLE of the remaining portion of his term, it is deemed to be an assignment; but if only a portion of the lessee's interest is conveyed, or the whole of his interest for only a portion of his term, it is a sublease. The distinction is sometimes very important.

**Right of Lessee to Assign.**—Unless the lessee is restrained from so doing by

the terms of the lease he may assign all his right and interest therein to other parties without the consent of the lessor. If there is a restraining clause in the contract he must first obtain the WRITTEN CONSENT of the lessor to the assignment.

An assignee may also re-assign to another assignee if there is no restriction to the contrary.

**Who Responsible in Case of Assignment.**—Where there is an assignment of the lease the lessor may look to EITHER the assignee or to the original lessee for the rent. The assignee takes the premises subject to all the terms and conditions of the original lease regarding the payment of rent, repairs, use of the property, and all other matters incorporated therein; and for violation of any of its terms the lessor has the same remedies against the assignee as against the lessee for any cause of action accruing while they are assignees, except where the assignment is made for security for a loan, and the lessee does not give up possession of the premises.

But, as stated, the assumption of the obligations of the contract by the assignee does not in any way release the

original lessee from his obligations to the original lessor; and unless the lessor agrees in writing to release the original lessee from the obligations imposed by the contract, and accepts the transfer of the liability for their performance to the assignee in his stead, then the original lessee will still be responsible to him whenever the assignee fails to pay the rent or observe the other covenants of the agreement.

**Acceptance of Assignee As Tenant By Receiving Rent From Him.**—It has been held that where a lessor accepts rent from the assignee and gives him a receipt therefor in his name, he thereby impliedly accepts the assignee as his own tenant, which would have the effect of relieving the original lessee from all the obligations imposed by the lease.

**Unlawful Assignment Terminates Lease.**—Any tenant or subtenant assigning the leased premises contrary to the provisions of his lease, thereby terminates the lease, and the landlord shall, upon service of proper notice to quit upon the person or persons in possession be entitled to restitution to him of such premises. See "Forfeiture of Lease."

**Forms for Assignment of Lease.**—

Where the lease has not been recorded, the assignment may be endorsed on the instrument itself, in words as follows:

ASSIGNMENT OF LEASE

**I hereby grant, sell, assign, and set over unto (name of assignee), all my right, title, and interest to, in, and under the within lease.**

**(Signature of assignor.....)**

**(Date.....)**

Where the lease has been recorded, the following form for the assignment should be used.

ASSIGNMENT OF RECORDED LEASE

**Know all men by these presents: That (name of the lessee in the lease to be assigned), the party of the first part, for and in consideration of the sum of (so many dollars), to him in hand paid by (name of assignee), the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain lease, bearing date the (insert date of lease), made and executed by (name of lessor), to (name of lessee), and recorded on the (tenth day of October, 1950), in book (176) of leases, at page (122) in the office of the county recorder of (Alameda) county, state of (California), of and to the following real property, to-wit:**

**(Description of property, same as in lease):**

**In witness whereof, the said party of the first part has hereunto set his hand the (first day of January, 1951).**

**(Signature of assignor.....)**

Where the consent of the lessor to the assignment is necessary, the following form will suffice:

LESSOR'S CONSENT TO ASSIGNMENT

**I (name of lessor in the lease), lessor in the lease above described, hereby consent to the**

**above assignment, this (first day of January, 1951).**

**(Signature of lessor.....)**

**Recording Assignment of Lease.**—Where the lease itself is recorded the assignment thereof should be also. It must be acknowledged before it can be recorded.

## SUBLETTING LEASE

**Lessee May Sublet Unless Restrained.**—The lessee may sublet all or part of the leased premises in the absence of any provision in the contract restraining him from doing so. If there is such a restriction then he must have the WRITTEN CONSENT of the lessor.

**Definition of Sublease.**—It is a sublease where a PORTION of the leased premises is re-leased by the lessee thereof to other tenants for either a part or for the whole of his term. It is also a sublease where the WHOLE of the premises are re-let by the lessee thereof for a portion of his term only.

When the original lessee parts with ALL his interest in the premises it is not a sublease, but is an assignment thereof; the distinction is important.

**Subtenant May Also Sublet.**—The sublessee may also sublet to other par-

ties where there is no restriction to the contrary.

**Lessee Still Liable for the Rent.**—The fact that the lessee sublets does not affect his liability to the lessor for the rent. The lessor knows only his immediate lessee in the transaction, and is bound to look only to him for his compensation. He cannot hold the subtenant liable, for the subtenant is responsible only to the party with whom he contracted. The lessor, may, however, agree to accept the subtenant as his immediate tenant, and to look to him for the rent in lieu of the original lessee, in which case the subtenant would be responsible to the original lessor, and the original lessee would thereby be relieved from his obligation to pay the rent during the continuance of the term of such subtenancy.

Also, if the original lessee surrenders his lease, and the subtenant remains in possession, and the lessor accepts rent from him, he then becomes the tenant of the lessor.

**Subtenants Are Bound By Terms of Lease.**—Subtenants are supposed to make inquiry and therefrom to know the terms of the lease under which they sub-

let, and they are therefore bound by its conditions. No new agreements can be added which will bind the lessor beyond those contained in the original contract. Nothing can be added and nothing taken away.

Therefore a cancellation of the original lease cancels also the sublease. Likewise, a notice to quit binds also the undertenants.

**Subtenant May Prevent Forfeiture of Lease.**—Any subtenant or other person interested in the lease may prevent the forfeiture thereof for violation of any of its provisions by performance of the obligation which is violated. That is, if the lessee has not paid his rent, for instance, and is served with notice to do so or give up possession of the premises, upon the lessee's failure to pay as demanded any other person interested may do so within the time allowed by law and thus save the lease from forfeiture. No matter from whom the lessor receives the rent its payment will extinguish the demand therefor.

The same is true in case of violation of any other of the conditions of the lease; the lessor's demand is satisfied

when any other person interested performs the thing demanded.

**Unlawfully Subletting Terminates Lease.**—Any tenant or subtenant subletting the leased premises, contrary to the provisions of his lease, thereby terminates the lease, and the landlord shall, upon service of proper notice to quit upon the person or persons in possession, be entitled to restitution to him of such premises. See "Forfeiture of Lease."

## WITNESSES

**Not Required By Law, but a Useful Precaution.**—The law does not require that there shall be witnesses to a lease of real property, but it is well to have at least one witness, for the purpose of more conveniently proving the instrument, if necessary. Better still to have two, so that either may testify, if needed, should the other be unable to appear.

## SEALS

**Necessity for Their Use Abolished.**—There is no distinction in this state between a sealed and an unsealed instrument and it is not necessary to use

either a wafer or a pen scroll in any form after a signature to a lease to represent a seal. Neither is it necessary to say, "Witness my hand and seal;" "Witness my hand" is sufficient.

CHAPTER VI.

# REAL ESTATE AGENTS

It is quite remarkable how many actions are brought in the courts by real estate agents for the recovery of commissions which they claim to have earned. In many cases, doubtless, they really have earned them, but they often meet with failure in their efforts to recover their fees because they overlooked the necessity of complying with some imperative provision of the law, their negligence in this respect acting as a bar to obtaining redress by legal action.

In this chapter an endeavor will be made to present and illustrate certain well-defined rules of law and practice which must be strictly complied with by the agent before he can enforce compensation for his services by legal process; and although most of these laws have been on the statute books for many years, they unfortunately seem to be unknown to many whose business would

particularly seem to require a knowledge of them.

## CONTRACT OF EMPLOYMENT MUST BE IN WRITING

**The Statute of Frauds.**—Away back in the seventeenth century there was enacted in England during the reign of Charles II a series of laws known then and now as the "Statute of Frauds." This statute, modified and changed to suit local conditions, has been re-enacted in some form in every state of our Union.

The principal object of the statute was intended to be the prevention of fraud and perjury by requiring certain specified contracts to be put IN WRITING. This, it was supposed, would lessen fraudulent practices. Yet it is doubtful if it really has accomplished that end, for it undoubtedly has been the convenient means of enabling persons to injure others by furnishing them a ready escape from the duty of fulfilling contracts which were honestly made, but which they did not wish to execute. Many contracts made in good faith have not been enforced because not reduced to writing and properly subscribed; and many a broker has lost his commission

because of the neglect of this all-important provision of the law.

But although the statute of frauds is one of the oldest in legal practice, still many are not familiar with it, and consequently fail to observe it.

**The Statute of Frauds as Applied to the Real Estate Agent.**—The Statute of Frauds as it now exists in the State of California reads:

"The following contracts are INVALID, unless the same, or some note or memorandum thereof, is in writing, and subscribed by the party to be charged or by his agent."

It then enumerates the different sorts of contracts which must be in writing, but only those contained in sections five and six will be considered here, they being of special application to the real estate agent.

Section 5: "An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged."

The matter of leases has been thoroughly gone into in the chapter on "Landlord and Tenant," and the matter of contracts relating to the sale of real property in the chapter on "Contracts of Sale of Real Property." Suffice it to repeat here, that EVERY CONTRACT for the sale of real property, or in any way affecting real property, or the conveyance of the same, either permanently or for a limited time, with the single exception of a lease for not more than one year, must be IN WRITING.

Section 6: "An agreement authorizing or employing an AGENT or BROKER to purchase or sell real estate for compensation or commission."

**Necessity of Having Authorization in Writing is Imperative.**—There are no qualificatons in, to, or about the section quoted above. The authority of the agent to buy, sell, or lease real property must be in writing, and must be signed by the owner or other proper person, or by some one authorized to act for him.

It must not be misunderstood as meaning that an oral authority to an agent is not valid, for it is; it is just as good as a written one as far as it goes. The statute does not render oral con-

tracts void, but means that no action can be brought to recover on them. It takes away the remedy. In other words, an oral authority to sell real estate has no standing in court. Such contracts are all right so long as there is no trouble over them, but no action to enforce them or any of their provisions can be maintained in a court of justice.

It should therefore be very plain, that no commissions or compensation for his services whatsoever can be collected by the agent by an action at law unless he is prepared to produce a written agreement authorizing him to act in the capacity for which he claims compensation.

There is no limitation or qualification to the above statement. It is true even to the extent that if the agent without written authority actually makes a sale, and the owner actually accepts the terms, receives the money, and delivers the deed, the agent cannot recover one penny for his services if the owner sees fit to refuse to pay him.

Neither would any deal made by the agent without written authority be binding upon his principal, who could back out of any transaction at any time be-

fore its actual consummation, and neither the agent nor his customer would have any redress.

**Defendant Must Plead Statute.**—As the Statute of Frauds is a defense solely, the party who is sued must set up in his answer the fact that the contract was not in writing if he wishes to make that his defense; otherwise he will be deemed to have waived that objection.

**The Agent's Contract.**—The authority from the owner to the agent to sell or barter property is not required to be in any particular form. It may come to him from the owner in the form of a letter, or letters, telegram, formal printed contract, or any other manner so long as it is in writing, and contains direct and positive authority to dispose of the property by sale, lease, barter or exchange.

The amount of the agent's commission need not be stated in the contract. While it is well to do so, it is not necessary. His services will be worth their reasonable value, and in the absence of any stated amount will be governed by the usual rates and customs prevailing in the community.

**Contracts Between Agents.**—The provisions of the Statute of Frauds do not

extend to agents who co-operate with each other. Where an agent offers to employ another agent to assist him in the disposal of property for which he holds the agency such employment need not be in writing. In other words, agents may agree verbally with each other to divide a commission.

## WHEN AGENT IS ENTITLED TO COMMISSIONS

**The Rule in California.**—Presuming that the agent is lawfully authorized to negotiate the sale or purchase of real estate in compliance with the requirements of the law, as stated above, the next point to be considered is, when is he deemed to have rendered services sufficient to entitle him to payment therefor on a commission basis? In the following paragraphs will be shown his status in this respect, based upon numerous decisions of the Supreme Court of the state.

**In Case of Open, or Non-exclusive, Agency.**—It may be remarked in commencing that the real estate agent's right of recovery depends upon his contract with the owner of the land; and he may make almost any kind of a contract upon

which his right to commission may depend.

An agent or broker is designated as a person whose business it is to bring buyer and seller together. Unless specially authorized he has nothing to do with the negotiation of the bargain.

Or, if he cannot bring the buyer and seller together, it then becomes his duty to procure from the buyer a valid contract to purchase, which contract must in all cases be in writing, and be presented without delay to the seller.

Probably the far greater portion of property in the hands of agents is simply listed with them on the open agency basis; that is, they are simply given authority to find a purchaser. There is usually no specified time set in which to find the purchaser, and in such case the agency is presumed to continue until the property is sold, or the agent is notified of its withdrawal from his agency, or from the market. If the same piece is listed with several agents, the one, of course, who first finds a buyer is entitled to the commission. The owner may also sell his property, if he finds a purchaser first, without incurring liability to any one.

**What Finding a Purchaser Means.**—The following, which is a synopsis of the decisions in several leading cases in this state, fixes definitely the status of the agent, and the duty resting upon him before he can be considered to be entitled to remuneration for his services:

To entitle the broker to recover commissions for effecting the sale of real property, he must show that he was employed by or on behalf of the owner to make the sale, and that his authority, or some note or memorandum thereof, was in writing, signed by the owner, or by his authorized agent. And before a broker can be said to have earned his commission it must also be shown that he produced a purchaser who was ready and willing and able to make the purchase on terms satisfactory to his employer, or in conformity with the price, terms and conditions as set forth in his contract of employment, and that he was the efficient agent or procuring cause of the sale.

Finding a purchaser means more than finding some one who will offer to negotiate for the purchase. It implies the production of one who is not only ready and willing to comply with the terms of

the sale, but who has also the present ability to consummate it, by doing all the acts that may be required of him to make an actual transfer of the land. To produce one who makes an offer of purchase, and who is without means, or who is not in condition to comply with the terms of the sale, and against whom a claim for damages resulting from a failure to perform the contract of purchase could not be enforced, does not constitute the finding of a purchaser within the meaning of the law; and the mere statement by one who is produced that he is ready and willing to make the purchase is not sufficient, for he must satisfy the owner that he also has the ability to do so. The owner has the right to an enforceable contract, if the sale is not to be consummated immediately.

The agent is never entitled to commissions when unsuccessful. The risk of failure to find a purchaser who is ready and willing is wholly his. Reward comes only with success. He may devote his time and labor, and spend his money, and yet if he fails or abandons the effort, or if his authority is fairly and in good faith terminated, he gains no right to commissions, no matter of what value

the efforts which he has made may afterwards prove to his employer.

As a sequence, then, it necessarily follows that where the agent produces a party with the ability to purchase, and who is ready and willing to do so at the price and terms set upon the property, he is entitled to his commissions, even if the owner backs out and refuses to complete the deal.

The same is equally true if the agent simply brings the buyer and the seller face to face, without taking any further part in the negotiations whatsoever, if therefrom a sale results, no matter on what terms or conditions. The fact that the sale is ultimately made at a different price from the figure at which the agent was authorized to sell will not make any difference; if the agent was the means of bringing the parties together, he is entitled to compensation for so doing on whatever transactions may subsequently occur as the result thereof, provided they were within the scope of his authority.

A somewhat difficult point arises here, however. Where no specified time is set in the agreement with the agent within which he must effect a sale, and he produces a customer who begins ne-

gotiations with the owner, which fall down and are abandoned at the time, but which are subsequently renewed between the customer and the owner, without the active participation of the agent, resulting in a sale, is the agent entitled to commissions? This is a difficult question to answer. Undoubtedly yes, if the sale be made within a reasonable time after he brought the parties together. But what constitutes a reasonable time cannot be definitely stated. There is no set rule, and each particular case must stand on its own merits. No more definite answer to the question can be given.

**Where Contract Specifies Time Limit Within Which to Find Purchaser.**—But where there is a time limit in the contract with the agent within which he is to effect a sale, it must appear that he performed the duty assigned him strictly within such limit. If he fails to do that he is not entitled to commissions, even though he made efforts to sell the property, and first called to it the attention of the party who subsequently makes the purchase, unless the delay in completing the sale was due to the negligence, fault, or fraud of the owner.

The leading case, upon which the California decisions on this point are based, may be summed up thus:

The two essentials are, that the broker under a written appointment must either produce a written contract to purchase, or introduce to the seller a customer ready, able, and willing to take the property upon the terms stipulated; and that this should be done within the time limited in the contract.

In this case, the agent had two months within which to find a customer. He did so, and brought him face to face with the owner, but the deal fell through, without any fault of the owner, who was really anxious to sell. Subsequently after the two months allowed the agent had expired, the parties got together again, and the sale was made. Upon refusal of the owner to pay commissions the agent brought an action to recover them.

The court held, that while it was true the agent was instrumental in enabling the owner to sell his land, still, as they entered into written stipulations as to the terms upon which the agent would be entitled to commissions, which were that he must produce a purchaser within

two months, these stipulations must govern; and as the agent's customer failed to take within the time stipulated, the owner was free to act as he saw fit. He was free to sell to the agent's customer, or to any one else, and was under no obligations to pay commissions to the former agent under the contract, because after its expiration it had spent its force.

This synopsis of the generally accepted rule makes it clear that where the agent is operating under an authority which is limited as to time, he can recover for his services only when he produces results within that time, either by producing before the owner a buyer ready to comply with the terms of the sale as set forth in his agreement with the agent, or else a valid contract of purchase in accordance therewith; but if the agent simply produces a prospective customer, the price and terms to be the subject of future negotiations, and such negotiations are not concluded within the time limit in the agent's contract, he cannot then claim commissions for what he has done, unless, as stated, there was fault or fraud on the part of his principal.

If the delay in closing the sale or the breaking off of the negotiations, is caused by any negligence, fault, fraud, or design on the part of the owner to defeat the agent of his commissions, the agent would then be entitled to recover for his services, but not otherwise.

**In Case of Defective Title.**—The agent has nothing to do with the title. If it proves upon search to be defective that is no fault of his. And unless he agrees that his commissions shall be dependent upon the owner's ability to furnish a satisfactory title, he will be entitled to his compensation when his part of the work is done; that is, when he has supplied a customer able, ready, and willing to make the purchase. The owner should know if his title is good, and the risk is not one for the agent to bear. Therefore the courts have decided that if the sale is not completed simply because the title is defective, or because of any other fault on the part of the seller, that circumstance should not work a hardship upon the broker, who may have spent much effort and money in procuring the sale, and his commissions are due and payable the same as they would have been if the title was satisfactory.

**When Agent is Not Entitled to Commissions.**—Where a clause is added to the agent's contract to the effect that he is to receive his commissions out of the first moneys paid by the purchaser to the owner, the courts have decided that he cannot recover his fees until and unless such moneys are actually paid. Such a clause is to be found in many contracts. The agent might produce his customer, ready, able, and willing to purchase, but, under such a clause in his agreement with the owner, if the latter refused to complete the sale the agent could not recover any compensation whatsoever, for the reason that his contract says his commissions are to be paid out of the first moneys received by his principal; therefore, if none are received by his principal, there would be none to pay the agent out of.

In a decision on this point the court said:

"It tends to show an agreement to pay commissions out of the first moneys received, and no money has ever been received. Under such a contract the broker is not entitled to compensation when he finds a purchaser ready, able, and willing to purchase on the pres-

cribed terms. There must be an actual sale, and a first payment, to entitle him to recover. It is so nominated in the contract."

The same rule would apply to contracts which stipulate, as some do, that the commission is due and payable as soon as the title passes.

**Agent Must Either Bring Buyer and Seller Together or Else Procure Signed Agreement to Purchase.**—A leading case in the law reports shows that the agent procured a purchaser who agreed verbally to buy the property offered, and deposited part of the purchase price. The agent informed his principal of what he had done, which was satisfactory, but never brought the parties together. The title proved defective, however, and the deal fell through. The agent then sued for his commissions. The following synopsis of the decision illustrates the rule, several times stated heretofore, that the agent must bring the parties together face to face, or else must present to the owner a valid and enforceable contract of purchase, signed by the proposed buyer:

The undertaking of the agent is to negotiate a sale; that is, to procure a

valid agreement to purchase from the buyer, which can be enforced by the vendor if his title is perfect. This undertaking on the part of the agent is complete when he delivers or tenders to the owner a valid written contract, conforming to the terms of sale agreed on, signed by a party able to comply therewith, or able to answer in damages if he should fail to perform.

But the necessity of a written contract of purchase may be rendered unnecessary if the agent bring the buyer and seller together, and the latter is able and willing and offers to complete the contract.

In either case the agent has done all that he can do, and if the vendor under such circumstances refuses to complete the sale, he nevertheless will be compelled to pay the agent his commission. The object of the vendor is to effect a sale of his property, and when the broker produces a contract executed by a solvent purchaser, or in lieu of a contract produces the purchaser in person, he is then entitled to pay for his services, whether the trade is finally consummated or not, because if the vendee refuses to take the property, after hav-

ing signed an agreement to do so, the vendor has a right of action against him for all damages which he may sustain by such refusal, including the commissions which he would be compelled to pay to the agent.

On the other hand, it being the duty of the agent to either produce his customer in person, or his written agreement, he has not fulfilled the conditions of his employment until he does one or the other; and as the right of the agent to commissions depends upon performance of his part of the contract, in the case in hand it was decided that, as he had not done either, the contract of purchase being only a verbal one, he was not entitled to recover for his services. The fact that a deposit was made at the time to bind the bargain did not affect the case one way or the other.

**Extension of Time.**—Where an agent is granted a further time in which to find a purchaser, it is just as necessary that the extension should be in writing as it is that the original agreement or contract should be.

**Exclusive Agency.**—Where the agent is given the exclusive agency to sell property, he will be entitled to his com-

missions whether the sale is made by him, or by the owner, or by any other person. It matters not whether the agent has made any progress towards securing a purchaser or not, the fact that his contract gives him the exclusive right to do so within a specified time is sufficient to protect him against any interference with that right. The owner cannot be deprived of the privilege of selling his property himself, but if he does so while under an exclusive contract with the agent, unless specially exempted in the agreement, he will be liable to the agent for commissions just the same as if the agent made the sale himself. The owner by selling deprives the agent of the opportunity to do so, thus disabling him by nullifying whatever effort he may have made, or expense he may have incurred.

## EXTENT OF AGENT'S AUTHORITY

**Governed by the Contract.**—The ordinary authority conferred upon the real estate agent is to find a purchaser. He cannot bind his principal by a contract of sale unless specially authorized to do so in his contract of employment. And

under no circumstances can he execute a deed or grant of the property unless he has either a special or general power of attorney for the purpose.

## REVOCATION OF AGENCY

**Power and Liability of Owner.**—As a general rule the owner has the power to revoke the authority of the agent at his will. But the judgment of the courts seems to be, that while he has the power to revoke, he cannot do so in violation of his contract without incurring liability therefor. Where the owner agrees in writing with the agent that the latter shall have a specified number of days or months in which to find a purchaser, he can be held liable for any loss incurred by the agent by reason of the revocation of the agency during said time. In other words, in making such a contract, the owner impliedly agrees that he will suspend his right to revoke the agency for a certain length of time, and for the violation of such an agreement he is as much liable as for the breach of any other contract.

The agency is also revoked by the sale of the property, or by the death of either the principal or the agent.

**Return of Deposit by Agent.**—The agent who is acting simply as the agent of the owner on commission should never return a deposit on the sale of property without the consent of the owner. The intending purchaser may claim that the title is defective, or that there has been misrepresentation, or for some other reason demand his deposit back, but the agent has no right to be the judge in such matters. When he takes the deposit he holds it simply as the agent for his principal, subject to his orders, and if he should return it, and the owner should suffer loss thereby, the agent would be responsible to him in damages to the extent of such loss.

**Excess Over Fixed Price as Commission.**—A contract of employment by the terms of which the agent is to retain as commission for his services all the excess which he obtains from the purchaser over and above the price set by the vendor is legitimate and valid.

**Form of Contract for Employment of Agent.**—Contracts of employment of agents to sell or exchange real property may take innumerable forms. From the one which follows by changing the de-

tails, one can be made up to suit almost any purpose.

The contract can be made exclusive, or non-exclusive.

It may be confined strictly to a time limit in which to make the sale.

It may provide that the commission shall be all the excess obtained by the agent over a certain amount.

It may reserve the privilege to the owner of making a sale without being bound for the commission.

It may provide for a flat commission of so many dollars.

It may eliminate the exchange portion if not desired to exchange.

In short, any conditions agreed upon may be inserted, having due regard to the laws as set forth in this article, care being taken to preserve the general form of language and the specific promises to pay and perform.

If the seller is a corporation, the authority of the agent must be by virtue of a resolution of the board of directors. The officers, as such, have no power to dispose of the property of the corporation without being authorized so to do. It is incumbent upon the agent to ascertain if his contract of employment is

properly authorized; otherwise there could be no recovery for his services. See the same subject in the chapter on "Contracts of Sale of Real Property."

CONTRACT OF EMPLOYMENT OF AGENT.

**I HEREBY AUTHORIZE and empower the (Out West Realty Company) to sell, or exchange, and to make and execute in my name, as my sole and exclusive agent, a contract of sale or exchange for the following described lot, piece, or parcel of land, situate, lying and being in the (city of Redlands, county of San Bernardino, state of California), and more particularly described as follows, to wit:**

**(Describe property sufficiently to identify it.)**
**Improvements .....**
**Encumbrances .....**
**Leases .....**

**Said sale to be made upon the following terms and conditions:**

**(Here insert terms in detail.)**

**And in case the said (Out West Realty Company) shall make a sale or exchange of the above described property, upon the said terms and conditions, I agree to pay them a commission of (five per cent) on the first one thousand dollars, and (two and one-half per cent) on balance of amount realized from said sale or exchange; and in the event of a sale or exchange of said property by said (Out West Realty Company), at a less or greater amount, or on different terms than as stated above, with my consent I agree to pay the same commission upon the amount received as agreed upon above.**

**This agreement is for the term of (four months) from date, and thereafter until it is abrogated or withdrawn in writing.**

**All expenses of advertising said property to be paid by (.....).**

**I also agree, within (thirty days) after a contract of sale is made according to the terms hereof, to furnish a certificate of title from a reputable abstract company, and then, upon the fulfillment of said terms and conditions, to execute and deliver to the purchaser, his assigns**

**or representatives, a good and sufficient grant deed of said property.**

**I am the owner of said property.**

**(Signature .....)**
**(Address .....)**
**(Dated at .....)**

Form of Employment of Agent and Agreement of Exchange.—The following form authorizes the employment of the agent in negotiating the exchange, provides also for the acceptance of the offer, and payment of commissions. There may be witnesses or not, as the parties choose. It is better to write the acceptance on the same paper as the offer, although it may be on a separate sheet. The agreement to pay commissions may be in a separate instrument also, if desired, but it must state very definitely the particular transaction and the terms upon which the commissions are to be paid.

In the absence of any agreement to the contrary, it is usually lawful for the agent to demand commissions from both parties to an exchange.

AGREEMENT FOR EXCHANGE OF REAL ESTATE

**THIS AGREEMENT witnesseth: That (I Jacob Jackson), am the owner of the following described first piece of property, situate, lying and being in the (city of Monrovia, county of Los Angeles, state of California), and more particularly described as follows, to wit:**

**(Give description here, same as in deed),**

which I desire to exchange for the following described second piece of property owned by (Jeremiah Johnson), situate, lying and being in the (city of Compton, county of Los Angeles, state of California), and more particularly described as follows, to wit:

(Here describe second piece of property sufficiently to identify it),

upon the terms and conditions as set forth below, to wit:

(Here set forth in detail the terms of the exchange.)

Messrs. (Woodrow & Wilson) are hereby authorized to act as my agents in negotiating an exchange, and I hereby agree that if they shall secure an acceptance of the proposition to exchange the above described property on the above terms that I will, within (thirty days) thereafter, furnish a certificate of title from a reputable abstract company, showing the said property to be free and clear of all encumbrance, except (state encumbrance here, if any), and then execute and deliver a good and sufficient grant deed conveying title to the property first above described to the said (Jeremiah Johnson), his assigns or representatives. I also agree to allow a reasonable time for the furnishing of a certificate of title of the second of the above described properties, and a good and sufficient grant deed conveying the same.

And it is further agreed with said (Woodrow & Wilson) that when they have secured an acceptance of the proposition to exchange the above described property on the above terms, I will then pay them the sum of (so many dollars) as commission and compensation for such services.

(Signature.....)

(Dated at .....)

## ACCEPTANCE OF OFFER TO EXCHANGE PROPERTY.

THIS AGREEMENT witnesseth: That (Jeremiah Johnson) owner of the second piece of property described in the within instrument, hereby accepts the proposition of exchange made therein, and upon the terms and conditions stated therein, and agrees, within (thirty days), to furnish a certificate of title from a reputable abstract company, showing the said property to

**be free and clear of all encumbrance, except (state encumbrance here, if any) and then, upon the fulfilment of said terms and conditions, to execute and deliver a good and sufficient grant deed of said property to the said (Jacob Jackson), his assigns or representatives.**

**And I further agree to pay Messrs. (Woodrow & Wilson) the sum of (so many dollars) as commission and compensation for their services in making said exchange.**

**(Signature.....)**

**(Dated at.....)**

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**TRANSFER OF REAL PROPERTY.**



CHAPTER V.

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CHAPTER VI.

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